SUPREME COURT OF THE UNITED STATES.

No. 201.

THE COUNTY BOARD OF SUPERVISORS OF SHEBOYGAN COUNTY, PLAINTIFFS IN ERROR,

vs.

WARD M. PARKER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 201.

THE COUNTY BOARD OF SUPERVISORS OF SHEBOYGAN COUNTY, PLAINTIFFS IN ERROR,

vs.

WARD M. PARKER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

INDEX.

	Original.	Print.
Præcipe for summons	1	1
Summons	2	1
Return on summons	3	2
Declaration of plaintiffs	4	2
Plea of defendant	32	16
Judgment	32	17
Motion for new trial	34	17
Bill of exceptions	37	18
Bond on appeal	51	23
Writ of error	53	24
Citation and service	54	24

1 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in the said district of Wisconsin, this day of November, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the said United States the eighty-ninth.

A. SCOTT SLOAN, *Clerk.*

Fees, $27 50.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America for the ninth circuit, and district of Wisconsin, begun and held according to law, on the second Monday of September, A. D. 1864, at the city of Milwaukee, in said district of Wisconsin, present and presiding the Honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, assigned to said circuit, and the Hon. Andrew G. Miller, district judge, on the fourth day of the term, to wit, on the fifteenth day of September, A. D. 1864, the following proceedings were had, to wit:

WARD M. PARKER
vs.
THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY of Sheboygan.

Be it remembered, that heretofore, to wit, on the first day of June, 1863, came the plaintiff, by his attorneys, Messrs. Bentley & Carpenter, and filed his præcipe in these words, to wit:

Circuit court of the United States for the 9th circuit and district of Wisconsin.

WARD M. PARKER
vs.
THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY of Sheboygan.

To the clerk:

Please issue summons returnable 1st Monday of July in the above entitled cause, plea of assumpsit, damages ten thousand dollars.

Dated, June 1, 1864.

J. A. BENTLEY,
MAT. H. CARPENTER,
Att'ys for Pl'ff.

And also filed bond for costs. Whereupon a summons issued, returnable the first Monday of July next, in the words and figures following, to wit:

2 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

You are hereby commanded to summon the County Board of Supervisors of the County of Sheboygan to appear before the circuit court of the United

States of America for the district of Wisconsin, in the ninth circuit, at the United States court-room, in the city of Milwaukee, on the first Monday of July ensuing, then and there to answer unto Ward M. Parker in a plea of trespass on the case on promises, to his damage ten thousand dollars, which shall then and there be made to appear. And of this writ make due return.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this first day of June, in the year of our Lord one thousand eight hundred and sixty three, and of the independence of the United States the eighty-seventh.

J. M. MILLER, *Clerk.*

J. A. BENTLEY AND MAT. H. CARPENTER, *Attorneys.*

3 *Return.*

And afterwards, on the 23d day of June, 1864, came the marshal and made return of the summons herein endorsed thereon as follows, to wit:

Served on the within-named County Board of Supervisors of the County of Sheboygan, by showing N. C. Farnsworth, chairman, and Frederick Zimmerman, clerk of said County Board of Supervisors, this summons, and by delivering to each of them a copy thereof, this 2d day of June, A. D. 1863.

D. C. JACKSON, *Marshal,*
By W. S. JACKSON, *Deputy.*

Service	$4 00
Travel	5 65
Copies	40
	10 05

And afterwards, on the 12th day of October, 1863, came the plaintiff, by his attorneys, and filed his declaration in the words and figures following, to wit:

4 Circuit court of the United States for the district of Wisconsin.

WARD M. PARKER
vs.
THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY of Sheboygan.

Here in court comes the said plaintiff, who is a citizen of the State of New York, and residing in the city of New York, by J. A. Bentley and Mat. H. Carpenter, his attorneys, complains against the defendant, which is a municipal corporation under the laws of the State of Wisconsin, served with process of a plea of trespass on the case upon promises.

5 *Declaration.*

For that whereas the said defendant, heretofore, to wit, at Sheboygan, in said district, on the 1st day of January, A. D. 1855, under and in pursuance of, and in the manner directed by, chapter 124 of the private laws of the State of Wisconsin, which were passed and enacted in the year A. D. 1854, issued the bonds of the county of Sheboygan, in said State, executed in the manner provided in said chapter, payable to Watts Sherman or bearer, in the city of New York, on the 1st day of August, A. D. 1876, numbered from one to one hundred, inclusively, and each for the sum of one thousand dollars, being for the sum of one hundred thousand dollars in all, and interest at 7 per cent., payable annually, on each and every of said bonds; and

issued and attached to each of said bonds coupon orders or drafts drawn by Lewis Curtis, president of the board of Sheboygan County Railroad Commissioners, upon the treasurer of the county for the said interest, payable annually as aforesaid, for each and every year said bonds respectively had to run, which said coupon drafts were numbered with the bonds respectively, and were each for the sum of seventy dollars, payable at the Bank of New York, in the city and State of New York, one upon each bond, payable yearly as the said interest matured by the tenor of said bond, and that the whole of said bonds, with coupons drafts thereto attached as aforesaid, were by said defendant duly issued and put in circulation in the money markets of the United States. That afterwards, to wit, on the 1st day of January, A. D. 1863, the plaintiff became and was the owner of seventy-one of said coupons, amounting in all to the sum of four thousand
6 nine hundred and seventy dollars, payable as follows, ten thereof payable August 1, 1861, and the other sixty-one thereof payable the 1st day of August, A. D. 1862; all of which coupon drafts were then in the hands and possession of the plaintiff as the lawful and bona fide owner thereof, to wit, at Milwaukee, in said district. And that after, to wit, then and there, the said defendant, in consideration thereof, then and there promised the said plaintiff to pay him the sum of money last aforesaid, to wit, the sum of four thousand nine hundred and seventy dollars, on demand; but the plaintiff says that the defendant to pay the said sum of money or any part thereof ever has and still does utterly neglect and refuse, although often requested so to do.

And the plaintiff further declares and complains against the said defendant, of a plea of trespass on the case upon promises.

7 For that whereas the said defendant on the 1st day of January, in the year one thousand eight hundred and sixty-three, at Milwaukee, in said district, was indebted to the said plaintiff in the sum of five thousand dollars, lawful money of the United States of America, for the work and labor, care and diligence, of the said plaintiff by the said plaintiff and his servants before that time done, performed, and bestowed in and about the business of the said defendant, and for the said defendant, and at the special instance and request of the said defendant, and also for divers materials and other necessary things by the said plaintiff found, provided, used, and applied in and about that work, at the special instance and request of the said defendant; and being so indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned when the said defendant should be thereunto afterwards requested. And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, in consideration that the said plaintiff had before that time, at the like special instance and request of the said defendant, done, performed, and bestowed divers other work and labor, care and diligence in and about the business of the said defendant and for the said defendant, and had before that time found, provided, used, and applied divers other materials and other necessary things in and about that business, the said defendant then and there undertook and faithfully promised the said plaintiff that the said defendant would well and truly pay the said plaintiff so much money as the said plaintiff reasonably deserved to have of the said defendant for the same when the said defendant should be thereunto afterwards requested; and the said plaintiff aver that the said plaintiff therefore reasonably deserve to have of the said defendant for the same the further sum of five thousand dollars, of like lawful money as aforesaid, to wit, at the place

States of America for the district of Wisconsin, in the ninth circuit, at the United States court-room, in the city of Milwaukee, on the first Monday of July ensuing, then and there to answer unto Ward M. Parker in a plea of trespass on the case on promises, to his damage ten thousand dollars, which shall then and there be made to appear. And of this writ make due return.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this first day of June, in the year of our Lord one thousand eight hundred and sixty three, and of the independence of the United States the eighty-seventh.

J. M. MILLER, *Clerk.*

J. A. BENTLEY AND MAT. H. CARPENTER, *Attorneys.*

3 *Return.*

And afterwards, on the 23d day of June, 1864, came the marshal and made return of the summons herein endorsed thereon as follows, to wit:

Served on the within-named County Board of Supervisors of the County of Sheboygan, by showing N. C. Farnsworth, chairman, and Frederick Zimmerman, clerk of said County Board of Supervisors, this summons, and by delivering to each of them a copy thereof, this 2d day of June, A. D. 1863.

D. C. JACKSON, *Marshal,*
By W. S. JACKSON, *Deputy.*

Service	$4 00
Travel	5 65
Copies	40
	10 05

And afterwards, on the 12th day of October, 1863, came the plaintiff, by his attorneys, and filed his declaration in the words and figures following, to wit:

4 Circuit court of the United States for the district of Wisconsin.

WARD M. PARKER
vs.
THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY of Sheboygan.

Here in court comes the said plaintiff, who is a citizen of the State of New York, and residing in the city of New York, by J. A. Bentley and Mat. H. Carpenter, his attorneys, complains against the defendant, which is a municipal corporation under the laws of the State of Wisconsin, served with process of a plea of trespass on the case upon promises.

5 *Declaration.*

For that whereas the said defendant, heretofore, to wit, at Sheboygan, in said district, on the 1st day of January, A. D. 1855, under and in pursuance of, and in the manner directed by, chapter 124 of the private laws of the State of Wisconsin, which were passed and enacted in the year A. D. 1854, issued the bonds of the county of Sheboygan, in said State, executed in the manner provided in said chapter, payable to Watts Sherman or bearer, in the city of New York, on the 1st day of August, A. D. 1876, numbered from one to one hundred, inclusively, and each for the sum of one thousand dollars, being for the sum of one hundred thousand dollars in all, and interest at 7 per cent., payable annually, on each and every of said bonds; and

issued and attached to each of said bonds coupon orders or drafts drawn by Lewis Curtis, president of the board of Sheboygan County Railroad Commissioners, upon the treasurer of the county for the said interest, payable annually as aforesaid, for each and every year said bonds respectively had to run, which said coupon drafts were numbered with the bonds respectively, and were each for the sum of seventy dollars, payable at the Bank of New York, in the city and State of New York, one upon each bond, payable yearly as the said interest matured by the tenor of said bond, and that the whole of said bonds, with coupons drafts thereto attached as aforesaid, were by said defendant duly issued and put in circulation in the money markets of the United States. That afterwards, to wit, on the 1st day of January, A. D. 1863, the plaintiff became and was the owner of seventy-one of said coupons, amounting in all to the sum of four thousand
6 nine hundred and seventy dollars, payable as follows, ten thereof payable August 1, 1861, and the other sixty-one thereof payable the 1st day of August, A. D. 1862; all of which coupon drafts were then in the hands and possession of the plaintiff as the lawful and bona fide owner thereof, to wit, at Milwaukee, in said district. And that after, to wit, then and there, the said defendant, in consideration thereof, then and there promised the said plaintiff to pay him the sum of money last aforesaid, to wit, the sum of four thousand nine hundred and seventy dollars, on demand; but the plaintiff says that the defendant to pay the said sum of money or any part thereof ever has and still does utterly neglect and refuse, although often requested so to do.

And the plaintiff further declares and complains against the said defendant, of a plea of trespass on the case upon promises.

7 For that whereas the said defendant on the 1st day of January, in the year one thousand eight hundred and sixty-three, at Milwaukee, in said district, was indebted to the said plaintiff in the sum of five thousand dollars, lawful money of the United States of America, for the work and labor, care and diligence, of the said plaintiff by the said plaintiff and his servants before that time done, performed, and bestowed in and about the business of the said defendant, and for the said defendant, and at the special instance and request of the said defendant, and also for divers materials and other necessary things by the said plaintiff found, provided, used, and applied in and about that work, at the special instance and request of the said defendant; and being so indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned when the said defendant should be thereunto afterwards requested. And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, in consideration that the said plaintiff had before that time, at the like special instance and request of the said defendant, done, performed, and bestowed divers other work and labor, care and diligence in and about the business of the said defendant and for the said defendant, and had before that time found, provided, used, and applied divers other materials and other necessary things in and about that business, the said defendant then and there undertook and faithfully promised the said plaintiff that the said defendant would well and truly pay the said plaintiff so much money as the said plaintiff reasonably deserved to have of the said defendant for the same when the said defendant should be thereunto afterwards requested; and the said plaintiff aver that the said plaintiff therefore reasonably deserve to have of the said defendant for the same the further sum of five thousand dollars, of like lawful money as aforesaid, to wit, at the place

aforesaid, whereof the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, had notice. And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, indebted to the said plaintiff in the sum of five thousand dollars, of like lawful money as aforesaid, for divers goods, wares, and merchandise by the said plaintiff before that time sold and delivered to the said defendant and at the like request of the said defendant; and in the further sum of five thousand dollars of lawful money as aforesaid, for so much money before that time lent and advanced by the said plaintiff to the said defendant and at the like request of the said defendant; and for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant and at the request of the said defendant; and for other money by the said defendant before that time had and received to and for the use of the said plaintiff; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said several sums of money in this count mentioned, when the said defendant should be thereunto afterwards requested. And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, accounted together with the said plaintiff of and concerning divers others sums of money before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there found to be in arrear and indebted to the said plaintiff in the further sum of five thousand dollars of like lawful money aforesaid; and being so found in arrear and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendant should be thereunto afterwards requested. Nevertheless, the said defendant, although often requested, &c., has not yet paid the several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff; but to pay the same or any part thereof to the said plaintiff the said defendant has hitherto altogether refused, and still does refuse, to the damage of the said plaintiff of ten thousand dollars, and therefore the said plaintiff brings suit, &c.

MAT. H. CARPENTER & J. A. BENTLEY,
Attorneys for Plaintiff.

8 The defendant will please to take notice that on the trial of this cause the plaintiff will give in evidence under the foregoing or money counts of this his declaration, coupon warrants, drafts, or orders, of which the following are true substantial copies, viz:

$70 00. No. 6.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1861, it being the amount of interest that day due on the Sheboygan County railroad bond No. 28.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary*

$70 00. No. 6.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1861, it being the amount of interest that day due on the Sheboygan County railroad bond No. 34.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 6.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars,
9 on the first day of August, A. D. 1861, it being the amount of interest that day due on the Sheboygan County railroad bond No. 35.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 6.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1861, it being the amount of interest that day due on the Sheboygan County railroad bond No. 36.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 6.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1861, it being the amount of interest that day due on the Sheboygan County railroad bond No. 1.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 6.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1861, it being the amount of interest that
10 day due on the Sheboygan County railroad bond No. 4.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 6.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1861, it being the amount of interest that day due on the Sheboygan County railroad bond No. 11.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 6.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1861, it being the amount of interest that day due on the Sheboygan County railroad bond No. 27.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 6.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1861, it being the amount of interest that day due on the Sheboygan County railroad bond No. 43.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

11 $70 00. No. 6.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1861, it being the amount of interest that day due on the Sheboygan County railroad bond No. 100.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 59.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 60.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

12 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 61.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 62.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 40.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

13 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 43.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 57.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County RR. bond No. 58.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

14 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 35.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 36.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 38.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

15 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 39.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 31.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 32.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

16 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 33.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 34.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 27.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

17 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 28.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 29.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 30.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

18 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 21.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 23.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 25.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

19 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 26.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 17.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 18.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

20 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 19.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 20.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 11.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

21 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 14.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 15.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 16.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

22 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 1.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 2.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 3.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

23 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 4.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 68.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 76.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

24 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 77.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 78.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 63.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

25 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 64.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 66.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 67.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

26 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 79.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 80.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the County of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 83.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

27 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 84.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 85.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 86.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

28 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 87.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 89.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Seboygan County railroad bond No. 95.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

29 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 96.

LEWIS CURTIS.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 97.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 98.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis

B. WILLIAMS, *Secretary.*

30 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount that day due on the Sheboygan County railroad bond No. 90.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay of Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 91.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 92.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

31 $70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 93.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

$70 00. No. 7.

Treasurer of the county of Sheboygan, pay to Watts Sherman, or bearer, at the Bank of New York, in the city of New York, seventy dollars, on the first day of August, A. D. 1862, it being the amount of interest that day due on the Sheboygan County railroad bond No. 100.

LEWIS CURTIS,
Pres't B'd Sheboygan Co. RR. Commis.

B. WILLIAMS, *Secretary.*

Truly yours,

MAT. H. CARPENTER,
J. A. BENTLEY, *Att'ys for Pl'ff.*

32 And afterwards, to wit, on the 16th day of October, 1863, came the defendant, by its attorneys, Messrs. Buttrick & Hill, and filed its plea in the words and figures following, to wit:

Plea.

Circuit court of the United States for the district of Wisconsin.

WARD M. PARKER
vs.
THE COUNTY BOARD OF SUPERVISORS OF SHEBOYGAN COUNTY.

And now comes the defendant in this action, by Buttrick & Hill, its attorneys, and defends the wrong and injury when, &c., and saith that the defendant did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against the defendant. And of this the defendant puts itself upon the country. And the plaintiff doth the like, &c.

BUTTRICK & HIIL, *Attorneys for Defendant.*

And afterwards, at a stated term of the circuit court of the United States of America for the ninth circuit and district of Wisconsin, begun and held according to law, at the city of Milwaukee, on the second Monday (being the 12th day) of September, A. D. 1864. Present and presiding, the Honorable Samuel F. Miller, associate justice of the Supreme Court of
33 the United States, assigned to said circuit, and the Honorable Andrew G. Miller, district judge. On the fourth day of said term, to wit, on the fifteenth day of September, A. D. 1864, the following proceedings were had, to wit:

This day came the parties, by their counsel, and the issue herein came on to be tried. Whereupon a jury was called to try the same, who came, to wit: Richard B. Winsor, David Moul, George J. Fowler, Jared Thompson, J. Fowle, Charles H. Sturdevant, Charles J. Kern, C. G. Heath, S. S. Daggett, W. H. Armstrong, James Campbell, and George Robinson, twelve free, honest, and lawful men of the district, who were severally sworn, empanneled, and charged by the court. And the jurors of the jury aforesaid, upon their said oaths, respectively, do say that the said defendant did assume and promise in manner and form as the said plaintiff has herein declared against it, and they assess the damages to the said plaintiff at the sum of four thousand nine hundred and five dollars and fifteen cents.

And afterwards, on the 16th day of September, 1864, came the defendant, by its counsel, and filed its motion for a new trial, in these words, to wit:

34 *Motion for new trial.*

Circuit court of the United States in and for the district of Wisconsin.

WARD M. PARKER
vs.
THE COUNTY BOARD OF SUPERVISORS OF SHEBOYGAN COUNTY.

And now comes the defendant, by Buttrick & Hill, its attorneys, and moves the court to set aside the verdict rendered herein on the 15th day of September, A. D. 1864, and for a new trial herein, for the following reasons:

1. That the court erred in admitting an act of the legislature of the State of Wisconsin, entitled An act to authorize the county of Sheboygan and the several towns in said county to aid in the construction of a railroad, approved March 9th, A. D. 1854, to be read in evidence over the exception of the defendant thereto duly made, because the said act is unconstitutional and void, in that it purports to authorize five persons therein named to aid in the construction of a railroad, and to create an indebtedness against the defendant, and to issue evidences thereof without the knowledge or assent of the defendant, and in that it assumes to establish an uniform system of county government, and in that it appears that the legislature has assumed
35 to appoint officers for the county of Sheboygan, in contravention of the constitution of the State.

2. That the court erred in admitting the bonds in evidence, for the reason that it does not appear on the face thereof that the same were issued under and in pursuance of said act, or that the defendant ever assented to or authorized the issuing of the same, but that it appears on the face thereof that the same were the bonds of persons or of a corporation other than the defendant, and that the same are none of them evidence of indebtedness against the defendants, and for receiving said bonds in evidence without proof of the petition required by section 12 of said act and of the notice and election required by the 7th section of said act.

3. That the court erred in receiving any evidence relative to the subsequent acts of the defendant in paying any part or portion of the interest thereon, and in appointing a director as specified in the amendments to said act, because such evidence is wholly immaterial, irrelevant, and incompetent.

4. That the court erred in receiving the coupons from said bonds in evidence, because said coupons are not evidence of indebtedness against the defendant, because they are drawn by unauthorized persons, have never been accepted, and are contrary to the provisions of law in that behalf.

5. That said verdict is in all respects contrary to evidence.

6. That said verdict is in all respects contrary to and against law.

Dated September 16, 1864.

BUTTRICK & HILL, *Att'ys for Def't.*

36 And afterwards, on the 21st day of September, 1864, came the parties, by their counsel, and the motion of the defendant for a new trial came on to be heard, and on consideration thereof it is ordered by the court that said motion be, and the same is hereby, overruled.

Whereupon it is considered and adjudged by this court now here, that the said plaintiff do have and recover of the said defendant, the County Board of Supervisors of the County of Sheboygan, the said sum of four thousand nine hundred and five dollars and fifteen cents, so as aforesaid assessed by the jury, together with fifty-two dollars and twenty-five cents, his costs about his said suit in this behalf by him expended, and that he have execution therefor.

Judgment roll signed September 22, 1864.

A. SCOTT SLOAN, *Clerk.*

Damages	$4, 905 15
Cost	52 25

And afterwards on the 22d day of September, 1864, came the defendant, by its counsel, and filed its bill of exceptions, duly settled, allowed, and signed in the words and figures following, to wit:

37 *Bill of exceptions.*

Circuit court of the United States in and for the district of Wisconsin.

WARD M. PARKER
vs.
THE COUNTY BOARD OF SUPERVISORS OF SHEBOYGAN COUNTY.

DISTRICT OF WISCONSIN, *ss:*

Be it remembered, that on the 15th day of September, A. D. 1864, at the September term of the circuit court of the United States of America, on the fourth day of said term, holden within and for said district, at the city of Milwaukee, before the Honorable Samuel F. Miller, and the Hon. Andrew G. Miller, judges of said court, came the plantiff, by his counsel, as well as the defendant, by its counsel, and a jury of twelve good and lawful men residing in said district, having been duly called and sworn to try the issue joined herein. To sustain said issue on his part, the plaintiff offered in evidence an act of the legislature of this State of Wisconsin, which is in words and figures following, to wit:

An act to authorize the county of Sheboygan and the several towns in said county to aid in the construction of a railroad.

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Billy Williams, Lewis Curtis, David Giddings, Julius Wolff, and Robert Hotchkiss, are hereby appointed a board of commissioners, for
38 the purpose of aiding in the construction of a railroad, authorized to be made from the city of Sheboygan, westwardly, by the way of Fond du Lac, to the Mississippi River.

SEC. 2. Said commissioners shall, previous to the transaction of any business, elect one of their number president, and one treasurer, and shall also appoint a secretary. The president when present shall preside at all meetings of the board for the transaction of business, and the secretary shall keep the record of all doings of said board. All meetings of said commissioners shall be at Sheboygan, at such time and place as shall be designated by a majority of them.

SEC. 3. The said commissioners are hereby authorized to borrow one hundred thousand dollars, upon the credit of the county of Sheboygan, for twenty years or less, in such sums as they may deem proper, at a rate of interest not exceeding seven per cent. per annum, payable annually in the city of New York, for the purpose of investing the same in a capital stock of a railroad company authorized to construct a railroad from Sheboygan, westwardly, by the way of Fond du Lac, to the Mississippi River, and to issue therefor the bonds of the county of Sheboygan, as hereafter mentioned; and in case the said money or any part thereof shall not be so borrowed, to subscribe for
so many shares of said capital stock of said railroad company that the
39 amount of the same at the par value shall be equal to one hundred thousand dollars, and to pay for the same in the bonds of said county, payable as above specified. In lieu of investing the said sum, or any part thereof, in the capital stock of said railroad company, the said board of commissioners are hereby authorized to loan the credit of the said county to the said company, to the amount of one hundred thousand dollars, for a length of time not exceeding twenty years at a rate interest not exceeding seven per cent. per annum, and to receive the convertible bonds of said company to secure the said county, and such other security as shall be agreed upon and approved by the said board of commissioners.

SEC. 4. The shares of stock in said railroad company, or the bonds and other securities of said company thus taken by said county, and all dividends and interest arising from the same are hereby pledged for the payment of the principal and interest of said bonds. *Provided, however,* That the board of commissioners may sell such shares of stock, or such bonds and other securities of said company's, but the proceeds thereof and interest shall still be pledged to pay the interest and principal of said county bonds,

SEC. 5. The board of supervisors of the county of Sheboygan, shall annually levy a tax upon all taxable property of said county, sufficient to
40 pay the interest upon such bonds, after deducting the dividends received by said county on said shares of stock, or the interest on said bonds of said company, and in any year, when the said bond shall become due, the board of supervisors of said county shall levy a tax as aforesaid, sufficient to pay said bonds so becoming due, after deducting any and all sums received by said county on the sales of shares of stock, or of the bonds of said company, or dividends not exceeding in the payment of interest.

SEC. 6. The said board of commissioners shall annually appoint one railroad commissioner, who shall attend the annual or special meetings of the stockholders of said railroad company, for the election of directors thereof, or for the transaction of other business, and shall be entitled to cast one vote for every

share of stock, which said county shall hold in said railroad company, and in case of his absence or inability to attend, to appoint in writing under their hands some other person who shall have the same power.

SEC. 7. No bonds shall be issued in pursuance of the provisions of this act, nor shall the credit of the county be loaned to said railroad company, until a majority of the legal voters of said company, voting upon said question, shall vote in favor of the same at an election called by the clerk of the board of supervisors or the sheriff of said county for that purpose. 41 At such election those voting in favor shall vote a ballot with the words inscribed thereon "For the railroad," and those voting against shall vote a ballot with the words inscribed thereon "Against the railroad." The clerk of said board of supervisors, or the sheriff of said county, shall give at least three weeks' notice of the time and place of holding said election, by publishing the same in two or more newspapers printed and published in said county, and this act shall be published in connection with such notice. Such election shall be conducted and the returns thereof made and canvassed in the same manner as an election for county officers in said county.

SEC. 8. The said bonds shall be signed before issued by the president and secretary of said board of commissisners and countersigned by the clerk of the board of supervisors or treasurer of said county, who shall keep a correct register of all bonds so countersigned by him. The said bonds, when signed and countersigned as aforesaid, shall be in the hands of any bona fide holder of the same full and complete evidence, both in law and equity, to establish the indebtedness of said county of Sheboygan according to the tenor and effect of said bonds. *Provided*, That no bonds shall be issued except by order of a majority of said commissioners at a 42 meeting of said board, which order shall be entered upon the records of their proceedings.

SEC. 9. All contracts entered into by said commissioners shall be made in the name of the Sheboygan County Railroad Commissioners, shall be signed by the president and secretary with the consent of the board; and all contracts shall be made by a vote of a majority of said board or by some person duly authorized by a vote of a majority of said board at a meeting of the same.

SEC. 10. It shall be the duty of said board of commissioners, on or before the first Tuesday of October in each year, to render a specific statement of their doing to the board of supervisors of said county of Sheboygan, verified by the oath of the president of said board; and said statement shall also show the sum of money that will become due for interest or principal or both upon the bonds of said county issued by them as aforesaid, for the ensuing year, and the place where the same is payable, and what sum of money so to become due will be required to be raised by a tax upon the taxable property of said county.

SEC. 11. Whenever any vacancy shall occur in said board of commissioners by resignation, death, or removal from said county of Sheboygan of any of said commissioners, it shall be filled by and election of the 43 remainder of said board by some freeholder of said county; and a majority of said commissioners shall constitute a board for the transaction of any business authorized to be done by said board.

SEC. 12. It shall be the duty of this clerk of the board of supervisors or sheriff of said county to give immediate notice of the election, in accordance with the provisions of section seven of this act, whenever a petition signed by one hundred freeholders of said county shall be presented to either the said clerk or sheriff asking for the same.

SEC. 13. The board of supervisors of any town in said county of Sheboygan are hereby authorized to subscribe, for their respective towns, any sum of money, not exceeding in any town the sum of twenty-five thousand dollars,

to the capital stock of the Sheboygan and Mississippi Railroad Company, and pay for the same in the bonds of said towns, respectively, payable within twenty years, with interest, payable annually at the city of New York, at a rate not exceeding seven per cent. per annum.

SEC. 14. The shares of stock in such railroad company thus taken by said towns and all dividends arising from the same are hereby irrevocably pledged for the payment of the interest and principal of said bonds. *Provided, however*, That the board of supervisors of said towns may sell such shares, but the proceeds thereof and interest shall still be pledged to pay the
44 interest and principal of said bonds.

SEC. 15. The board of supervisors of said towns, when the same shall become necessary, shall annually levy a tax upon the taxable property of said towns sufficient to pay the interest upon such bonds, after deducting the dividends due to such towns on said shares of stock; and in any year when said bonds or any part thereof shall become due said board of supervisors shall levy a tax as aforesaid, sufficient to pay said bonds so becoming due, after deducting any and all sums receivable by said board on the sale of the shares of the stock of said company or dividends not expended in the payment of interest.

SEC. 16. The board of supervisors of each of said towns may annually appoint one railroad commissioner, who shall attend the annual or special meetings of the stockholders of such railroad company for the election of directors thereof, and shall be entitled to cast one vote for every share of stock which said town shall hold in such railroad company, and in case of the absence of such commissioner or inability to attend, to appoint in writing, under their hands, some other person, who shall have the same power.

SEC. 17. No bonds shall be issued in pursuance of the provisions of this act until a majority of the legal voters of said towns voting upon said question shall vote in favor of the same at an election called by the
45 said board of supervisors for that purpose, to be held at the usual place of holding elections in said town. At such election those voting in favor shall vote a ballot with the words inscribed thereon: "For the railroad;" and those voting against it shall vote a ballot with the words inscribed thereon: "Against the railroad." One week previous notice of such election shall be given either in a newspaper published in said towns, or by notice posted in three public places in said town respectively. Said election shall be conducted and the returns thereof made and canvassed in the same manner as at the annual town meeting of said towns.

SEC. 18. This act shall take effect and be in force from and after its passage.

Approved March 9, 1854.

To which offer the defendant then and there objected, for the reasons that said act is unconstitutional and void, because—

I. The legislature of the State in and by the said act assume to appoint the five persons therein named, and to clothe them with the power of county officers, contrary to the constitution of the State, Article XIII, sec. 9; Article IV, section 22 and 23. Which objection the court overruled, and to which ruling and decision the defendant then and there excepted.

II. The legislature of the State in and by said act assume to
46 establish for Sheboygan County a different system of government than for other counties, contrary to the State constitution, Art. IV, sec. 23. Which objection the court overruled; to which ruling and decision the defendant then and there excepted.

And the said act was then read in evidence, whereupon, to further maintain said issue, the plaintiff offered in evidence the bond of which the following is a copy, to wit:

No. —. $1,000.

United States of America, State of Wisconsin, Sheboygan County bond, issued August 1st, A. D. 1855, to aid in the construction of the Sheboygan and Mississippi railroad.

Know all men by these presents that the county of Sheboygan is justly indebted and promises to pay to Watts Sherman, or bearer, one thousand dollars, at the Bank of New York, in the city of New York, on the first day of August, A. D. 1875, together with interest thereon at the rate of seven per cent. per annum, payable on the presentation of the annexed interest warrants, for the payment of which the faith and credit of the said county are inviolably and irrevocably pledged. This bond is one of a series of like tenor, date, and amount, numbered from one to one hundred, inclusive,
47 and amounting in the whole to the sum of one hundred thousand dollars, and is issued in pursuance of a resolution of the Sheboygan County Railroad Commissioners, passed July 24th, A. D. 1855.

LEWIS CURTIS,
President of the Board of Sheboygan Co. RR. Commissioners.
B. WILLIAMS, *Secretary.*

Countersigned: W. W. KING,
Treasurer of the County of Sheboygan.

STATE OF WISCONSIN, *County of Sheboygan, ss:*

I hereby certify that this bond is issued by the Sheboygan County Railroad Commissioners, by virtue of and in conformity with the provisions of an act of the Wisconsin legislature, entitled "An act to authorize the county of Sheboygan and the several towns in said county to aid in the contruction of a railroad," approved March 9th, 1854.

In witness whereof, I have hereunto set my hand and affixed the seal of said county this 30th day of August, A. D. 1855.

[L. S.] A. POTT,
Clerk of the Board of Supervisors of Sheboygan County.

48 To which offer the defendant then and there objected, because the said bond is incomplete, immaterial, and irrelevant, in that—

I. No authority to the county or its officers to issue said bond has been shown.

II. No authority to the person who issued and executed the same has been proven.

III. It does not appear upon the face of said bond that the same was issued under or pursuant to any act of the legislature or by the properly constituted officers of the county of Sheboygan.

III. The petition required by the 12th section and the notice and election prescribed in the 7th section, the act approved March 9, 1854, (supra,) as well as a compliance with all the other requirements of said act should be proven prior to the introduction of the bond.

IV. The said bond is not evidence of an indebtedness against the defendant.

Which objection the court overruled; to which ruling and decision the defendant then and there excepted, and the said bond was read in evidence. And the plaintiff then read other bonds of like favor, tenor, and effect, subject to the same objection and exceptions. The plaintiff then offered 71 coupons from said bonds, the same described in the declaration in evidence, each in words and figures following to wit:

49 To which offer the defendant objected, because the said coupons were incompetent, immaterial, and irrelevant, in that—

I. They are not evidence of any indebtedness against the defendant.

II. They were not issued by the defendant or its officers.

III. The defendant is prohibited by law from paying such orders out of the treasury.

Which objection the court overruled; to which ruling and decision the defendant then and there excepted.

And the plaintiff then offered resolutions of the defendant appointing a director of said railroad company, according to the provisions of said act and the acts amendatory thereto, and evidence that the defendant had paid a part or portion of the interest upon said bonds, and other evidence tending to show a recognition and ratification of said bond by the defendant, to which the defendant objected as immaterial and incompetent, which the
50 court overruled, and the defendant then and there excepted, and the said resolution and evidence was admitted and read, and the plaintiff then rested.

And the foregoing is all the testimony produced upon said trial. And the jury thereupon found a verdict for the plaintiff and against the defendant, and assessed the plaintiff damages at $4,905 15.

And afterwards, on the 17th day of September, 1864, the defendant, under leave of court, filed its motion for a new trial, because of the overruling of the objections hereinbefore stated; and after argument of counsel for the parties, the court denied said motion. To which the defendant then and there excepted.

And for the reason that none of said exceptions appear of record in this cause, the defendant now comes and asks that this its bill of exceptions may be signed, sealed, enrolled, and made a part of the record in this action.

And it is done at the city of Milwaukee, in the said district, this 22nd day of September, A. D. 1864.

SAMUEL F. MILLER. [SEAL.]
A. G. MILLER. [SEAL.]

And afterwards, on the 29th day of September, 1864, came the defendant, by its counsel, and filed its bond to the plaintiff, duly approved by the circuit judge, in the words and figures following, to wit:

Bond.

51 Supreme Court of the United States.

THE COUNTY BOARD OF SUPERVISORS OF SHEBOYGAN COUNTY
vs.
WARD M. PARKER. } In error.

Know all men by these presents that we, Edwin L. Buttrick and Edward J. Hill, are held and firmly bound unto the above-named Ward M. Parker in the sum of two hundred dollars, to be paid to the said Ward M. Parker, his executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated September 29, A. D. 1864.

Whereas the above-named the County Board of Supervisors of Sheboygan County have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit, by the circuit court of the United States for the ninth circuit and district of Wisconsin:

Now, therefore, the condition of this obligation is such that if the above-named plaintiff shall prosecute its said writ of errror, and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

EDWIN L. BUTTRICK. [SEAL.]
EDW'D J. HILL. [SEAL.]

Sealed and delivered in presence of—
J. A. LOVELY.

Approved Sept. 28, 1864.

SAM. F. MILLER.

52 Whereupon a writ of error and citation were duly issued, and afterwards, on the same day, the citation was returned, endorsed thereon as follows, to wit:

The defendant in error admits service of the within citation this 29th day of Sept., A. D. 1864.

MATT. H. CARPENTER,
Attorney for Plaintiff below and Def't in error.

53 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States of America for the district of Wisconsin, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court of the United States of America for the district of Wisconsin, before you, between Ward M. Parker is plaintiff, and the County Board of Supervisors of Sheboygan County is defendant, a manifest error hath happened, to the great damage of the said County Board of Supervisors of Sheboygan County, as by the complaint appears, and it being fit that the error, if any there hath been, should de duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, that of right and according to law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this twenty-ninth day of September, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

[SEAL.] A. SCOTT SLOAN, *Clerk.*

Filed 7th Dec'r, 1864.

54 UNITED STATES OF AMERICA, *ss:*

To Ward M. Parker, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the ninth circuit and district of Wis-

consin, wherein the County Board of Supervisors of Sheboygan County is plaintiff and you are defendant, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Roger B. Taney, chief justice of the said Supreme Court, this twenty-ninth day of September, in the year of our Lord 1864.

[SEAL.] SAM. F. MILLER,
One of the Justices of the Supreme Court of the United States.

The defendant in error admits service of the within citation this 29th day of Sept., A. D. 1864.

MATT. H. CARPENTER,
Attorney for Plaintiff below and Def't in error.

Filed 7th Dec'r, 1864.

REC. 201—4

Supreme Court of the United States.

No. 201.—December Term, 1865.

THE COUNTY BOARD OF SUPERVISORS OF SHEBOYGAN COUNTY,

Plaintiff in Error,

vs.

WARD M. PARKER.

Brief submitting case without argument.

MATT. H. CARPENTER,

Counsel for Defendant in Error.

Jos. L. Pearson, printer, 511 Ninth street.

Supreme Court of the United States.

No. 201.—December Term, 1865.

THE COUNTY BOARD OF SUPERVISORS OF SHEBOYGAN COUNTY, Plaintiff in Error,

vs.

WARD M. PARKER.

This suit was commenced in the Circuit Court of the United States for the District of Wisconsin, to recover the amount of certain interest coupons attached to bonds issued by the defendant in aid of a certain railroad, according to the provisions of an act of the legislature of the state of Wisconsin, entitled "An act to authorize the 'county of Sheboygan, and the several towns in said 'county, to aid in the construction of a railroad;" approved March 9, 1654.

It is not denied that the bonds were issued in pursuance of the provisions of the act, and that the plaintiff below, the defendant in error, is a *bona fide* holder. The act itself provides (see section 8, printed record, page 20) that the bonds "*shall be, in the hands of any bona fide holder of 'the same, full and complete evidence, both in law and equity, to*

'establish the indebtedness of said county of Sheboygan accord-'ing to the tenor and effect of said bonds."

Our counties are municipal corporations, with the corporate name "The County Board of Supervisors of —— County." The party defendant in this cause, therefore, is "the county of Sheboygan," *by its corporate name.*

R. St. 1849, Chap. 10, Sec 7.
R. St. 1858, Chap. 13, Sec. 25.
Perry v. The State, 9 Wis. Rep., 22.

Previous to 1854 a corporation had been created to build and operate a railroad from the city of Sheboygan in said county, westward, and the county was empowered, by the act in question, to aid in the construction of the road, by becoming a stockholder in the company and issuing its bonds in payment to the amount of one hundred thousand dollars. It is well settled that the legislature may authorize towns and counties so to aid in the construction of railroads; and it must follow that the legislature may prescribe the manner in which the county shall become bound.

Bushnell v. Beloit, 10 Wis., 195.
Clark v. Janesville, 10 Wis., 136.

In this instance the act named certain persons who were to become the agents of the county, to subscribe on its behalf for stock, and issue its bonds in payment; provided the people of the county should so determine at an election to be held as therein provided. The election was held, a majority of the votes were in favor of issuing the bonds under the act, and the bonds were thereupon issued and delivered by the county to the company in payment for stock subscribed for according to the act; (see the recitals of the bond, printed record, page 22;) the road was built and put in operation, and the bonds have passed into the hands of *bona fide* holders.

Subsequent to the issuance of the bonds the legislature passed an act authorizing the *County Board of Supervisors of Sheboygan County* to appoint a director of the railroad company to represent the stock which the county had purchased with these bonds, according to the first act.

Record, page 23.

The Board of Supervisors of the county, after the issuance of the bonds, and after the passage of the supplemental act, appointed a director of the company, *and made payments of interest on said bonds;* (Record, page 23;) but now being called upon to make another payment, the county sets up, in defence, that the act authorizing the county to subscribe for stock and issue its bonds was unconstitutional, because it appointed officers to act for the county, while, it is alleged, the constitution requires all county officers to be elected by the people or appointed by the Board of Supervisors.

In reply we say:

1. The commissioners named in the act, became, after the election, the agents of the county for a special purpose; but were not "officers" of the county within the meaning of the constitution.

2. That if the commissioners are to be considered as "*officers*" within the meaning of the constitution, the election which was held in the county under the act, was in substance *an election of the commissioners*, which satisfies the constitution.

3. That if the court shall be against us upon both the foregoing propositions, and hold that so much of the act as related to commissioners was unconstitutional; *nevertheless the act in all other respects was valid;* and the commissioners, after the election, were *de facto* officers, and their acts are binding as between the county and the bondholders; and

4. That if the court shall hold against us as to all the

foregoing propositions; *it only results that the bonds were irregularly issued*, by persons claiming to act under color of law on behalf of the county but really having no authority; and the supplemental act of the legislature and the proceedings of the county under that act, *and particularly the payment of part of the interest on the bonds*, amount to such a ratification, by the defendant, of the issuance of the bonds, as entitles the plaintiff—a *bona fide* holder—to recover in this suit.

I.

THE COMMISSIONERS WERE MERE AGENTS, NOT OFFICERS, OF THE COUNTY.

Article XIII, section 9, of the constitution, provides: "All county officers whose election or appointment is not 'provided for by this constitution, shall be elected by the 'electors of the respective counties, or appointed by the 'Board of Supervisors, as the legislature shall direct."

What is intended by "officers" in this section?

Our counties are parts of the machinery of our state government, and exercise by delegation many governmental powers. The principal officers of the county, those public agents by whose hands the county performs its governmental functions, as sheriff, &c., are mentioned and their election by the people provided for by the constitution itself; and then, for the purpose of preventing the legislature from evading these provisions, the section above quoted was inserted in the constitution. And it is fully conceded that *the political* functions of the county, such as levying taxes, &c., can only be performed by officers elected or appointed as provided in this section. But it is submitted that the section does not extend further: if it does, and is to be construed as the opposite counsel claim, *so as to embrace every agent of the county*, then it is clear that the opposite counsel themselves are making this captious defence unconstitutionally, not having been

elected or appointed according to the constitution; and according to the logic of their brief, *every act performed by them is void*, and we are therefore entitled to judgment in this action as on default.

This county, which is a political corporation, may also be clothed with certain of the powers and franchises of a private corporation; and in all things pertaining to its interests in the latter capacity, may be represented by mere agents. In this behalf it is no more than any other private corporation. A county might be authorized to build and operate a railroad; in which case it would make contracts for the transportation of freight and passengers, employ conductors and other employees, and sue and be sued like any other railroad company. In such case would its laborers and employees, building and operating the road, be "*officers*" within the meaning of the constitution, *who must be elected by the people?* This court held in *Curran vs. The State of Arkansas*, 15 *How.*, 304, that even A STATE, by becoming a stockholder in a bank, *pro tanto*, abdicated its sovereign capacity and might be sued like a private corporation. In subscribing for railroad stock, and issuing its money obligations in payment, the county was acting, not in the character of a political corporation, but in its newly invested capacity of a private corporation; and therefore this law properly authorizes these acts to be performed by mere agents. But in the matter of levying a tax to pay the principal or interest of the bonds, the county acts in a political capacity, and exercises a delegated portion of the sovereign power of the state; therefore, the act requires this to be done by its constitutional officers,—*the Board of Supervisors.*

An act of Congress authorizing the Secretary of War, or the commanding general to purchase military supplies in the name of the United States and issue its obligations, would be perfectly constitutional. But an act authorizing the Secretary of War to make appropriations from the treasury, or levy taxes, to pay these obligations would

be unconstitutional, because this is a sovereign power vested in Congress which cannot be delegated. *In State v. Kennon et al*, 7 *Ohio State*, 562, the court define an officer as one who is "to exercise continuously, *and as a part 'of the regular and permanent administration of the govern-'ment*, important public powers, trusts and duties." In other words, an "officer" of the county is one by whose hand the county performs its political or governmental functions.

II.

IF THE COMMISSIONERS WERE OFFICERS, THEY WERE ELECTED.

This act provided that certain persons named, should make subscription in the name of the county, and isssue the bonds of the county in payment, for railroad stock; but that no bonds should be issued unless the people should vote in favor of their being issued, at an election to be held according to law. Without the issuance of bonds, nothing would or could be done, and the whole act would be inoperative. The act, therefore, submitted the question to the people of the county in the form of an election, "Will you have *the persons named* act for you in making 'subscription for stock, and issuing your bonds in pay-'ment?" The people vote "We will." Is not this, in substance, *electing the persons named*, to do the things mentioned in the act? If the people had any objections to these persons, or to their serving in this behalf, they had but to vote "*against the railroad*," and thus prevent their acting.

Suppose the legislature should pass an act declaring that John Doe should be sheriff of Sheboygan county for the next ensuing constitutional term of two years, "*provided*, the voters or a majority of them should, at the 'next general election cast a ballot as follows: For 'sheriff, John Doe," and, suppose the votes to be cast accordingly; would there be any doubt that John Doe was legally elected? The legislative nomination would have

no effect, *but the election would be valid.* The constitution requires no particular form for an election. All that is required is that the people should have an opportunity to declare by ballot, whether or not they will have a certain person act for them in a certain capacity. If they thus declare that they will, they, in substance, *elect* such person for the given purpose. *This was done in this case.*

III.

Even conceding that these commissioners were "officers" within the meaning of the constitution, and therefore their legislative appointment was unconstitutional, and that the election had no effect in this behalf, yet the other provisions of the law were constitutional and the commissioners were *de facto* officers, whose acts are binding between the county and the *bona fide* holders of these bonds. The commissioners acted in this behalf *under color of the law and the election.*

1. The other sections of the act, indeed the whole act, is valid, except so much as appointed the persons named to hold the office of commissioners.

Fisher vs McGerr, 1 Gray, 21.
Com. vs. Hitchings, 5 Gray, 485.
State vs. Kennon, 7 Ohio St., 546.

"An officer *de facto* is one, who, having color, but no 'right, is yet reputed and recognized, and acts as the officer 'he assumes to be;" and the acts of such *de facto* officer are valid.

State vs. Jacobs, 17 Ohio, 143.
State vs. Allen, 12 Ohio, 16.
State vs. Constable, 7 Ohio, part 1, p. 7
Peo. vs. Collins, 7 John., 551.
Fowler vs. Beebe, 9 Mass., 234.
In re Boyle, 9 Wis., 264.

IV.

Conceding all the foregoing propositions to be unsound; conceding that the commissioners were officers within the meaning of the constitution, and their appointment by the legislature therefore irregular and unconstitutional; conceding that the commissioners acting in the premises under color of the law and the election under it, were neither agents, nor yet *de facto* officers of the county; what results? Why, simply that persons claiming to act for the county, had issued its bonds without really having had the authority to do so. But the provisions of the law in question authorizing the county to become a stockholder of the railroad company, and pay in bonds, were valid and constitutional; these commissioners in fact did subscribe and did issue and deliver the bonds of the county in payment; the county therefore received the full equivalent for the bonds. After this the legislature authorized the constitutional officers of the county, *the Board of Supervisors*, to elect, and they did elect, a director of the company to represent the stock which the county had paid for with these bonds; *and these officers of the county, levied and collected a tax to pay part of the interest on the bonds.* Does not this cure *the mere want of authority* in the persons who pretended to act on behalf of the county in issuing the bonds, *and amount to a ratification?*

See Knox Co. Com'rs. vs Aspinwall, 21 How., 544.

In Mills vs. Gleason, 11 Wis., 490, our Supreme Court held, that bonds of the City of Madison, which were issued before the act creating the corporation had been published, and therefore before it was in force, might be ratified by the city after it had a legal existence.

The Court say: "If a man without any authority assumes 'to act as the agent of another, although the act as to the 'other is of no validity, yet if he subsequently ratifies it, and 'adopts it, and receives the benefit of it, he is as much 'bound as though he had authorized it in the first instant.

'*And we think this principle applicable to this case.* Here 'everything was done necessary to authorize the issuing 'of the bonds, except the publication of the charter, *all the* '*parties however supposing it to be in force.* If after it was 'in force, the city received the proceeds, and appropriated 'them to its own use, and recognized the validity of these 'bonds, we could not well imagine a case more fit for the 'application of this rule. And we think the following 'authorities fully justify its application.

'Charitable Society vs. Dedham, 1 Pic., 372.
'Edwards vs. The Grand June. R. R. Co., 7 Sim., 85.
'Goodly vs. R. R. Co., 16 E. L. and Eq., 596."

The principle of this decision is, that the issue of the bonds by the officers of the corporation, before the act creating the corporation was in force, is to be regarded as the act of one pretending to be an agent of the corporation, but having no authority, and that the act may be ratified by the corporation, *in pais*, in the same manner that a principal may ratify the acts of one pretending to be his agent. The decision goes far beyond what is necessary for us in this case, because there the principal was not in existence at the time the agent pretended to act. Here the defendant was in existence as a corporation, and the act of issuing the bonds was, at the worst, an act performed by persons acting under *color of law*, as the agents or officers of the defendant, but really without authority.

What acts of a principal will amount to a ratification, when the ratification may be by acts *in pais?*

Story on Agency, sec. 253, speaking of such acts of ratification, says: "For this purpose the acts and conduct of 'the principal are construed liberally in favor of the agent. '* * *Slight circumstances*, and *small matters*, will some-'times suffice to raise the presumption of a ratification."

"Sec. 255. *Long acquiescence, also, without objection, and even* '*the silence of the principal*, will, in many cases, amount to 'a conclusive presumption of the ratification of an unau-

'thorized act. * * Thus for example, if an agent with-'out authority, should compromise a debt of his principal, 'who, after knowledge of the fact, *should make no ob-'jection*, but acquiesce for a length of time in the act, he 'would be bound by it."

Here, after the issuance of the bonds, the defendant, by its constitutional officers, *the Board of Supervisors*, acting under legislative sanction, appointed a director of the company, to represent the stock, thus affirming the action of the commissioners in its name, and actually levied a tax and paid part of the interest on these bonds. A clearer case of the ratification by the principal of the unauthorized acts of his agent, or of one assuming to be his agent, never was established.

MATT. H. CARPENTER,
Counsel for Deft. in Error.

1853

SUPREME COURT OF THE UNITED STATES.

THE COUNTY BOARD OF SUPERVISORS OF SHEBOYGAN COUNTY vs. PARKER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

BRIEF FOR PLAINTIFF IN ERROR.

BUTTRICK & HILL,

Attorneys for Plaintiff in Error,

MILWAUKEE, WISCONSIN.

United States of America.

IN SUPREME COURT.

DECEMBER TERM, A. D. 1864.

THE COUNTY BOARD OF SUPERVISORS OF SHEBOYGAN COUNTY,

Plaintiff in Error.

vs.

WARD M. PARKER,

Defendant in Error.

Error to the Circuit Court of the United States for the District of Wisconsin.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT OF THE FACTS.

Defendant in error sued in assumpsit upon coupons attached to bonds which he claimed were issued pursuant to an act of the Legislature of the State of Wisconsin, entitled "An act to authorize the County of Sheboygan and the several towns in said county to aid in the construction of a railroad," approved March 9, 1854, and published June 30th, 1854, in the local laws of that year, pp. 150-154. Plea: general issue.

To sustain the allegation that "The bonds were issued under and in pursuance of, and in the manner directed by said act," the plaintiff below proffered the act, the bonds and the coupons, and they were admitted subject to exceptions. Further testimony was offered and admitted — subject to exceptions — tending to show a ratification of the bonds.

Verdict for the plaintiff. Motion for a new trial overruled and exception taken. The testimony and exceptions are saved by bill, which shows the errors assigned.

I.

No power to issue the bonds and coupons is in terms or in fact conferred upon the County of Sheboygan by the act in question, for ; —

Section 1 appoints Billy Williams, Louis Curtis, David Giddings, Julius Wolf, and Robert H. Hotchkiss, *a Board of Commissioners*, for the purpose of aiding in the construction of a railroad, authorized to be made from the City of Sheboygan westwardly by way of Fond du Lac to the Mississippi River.

Section 2 provides for the organization of the Board, the duties of President and Secretary, and that its meetings shall be held at Sheboygan.

Section 3 purports to authorize these Commissioners, without the consent of Sheboygan County, to use the credit of the county, as well as to create a county indebtedness, to the amount of $100,000 by issuing the bonds of the county in aid of the Railroad. The Commissioners may borrow $100,000, and give therefor the bonds of the county for a term of twenty years or less, and invest the same in the railroad, or subscribe $100,000 in the capital stock of the Railroad Company, and pay for the same in such county bonds, or they may loan $100,000 in county bonds directly to the company, and take such security therefor as the Commissioners shall deem proper.

Section 4 purports to pledge the shares of stock as securities thus taken, with dividends and interest, for the payment of the county bonds, providing that the Commissioners may sell such securities or shares of stock, but on condition that the proceeds still be pledged.

Section 5 directs the Board of Supervisors of the county to annually levy a tax upon the taxable property of the county to meet the interest on the bonds and to provide for the payment of the principal.

Section 6 purports to authorize the Commissioners to appoint a Railroad Commissioner to represent the county as a stockholder in said Railroad Company.

Section 7 provides that the bonds shall not be issued until the legal voters vote "for a railroad."

Section 8 directs that the bonds shall be executed by the Board of Commissioners, but not issued except by order of the Commissioners.

Section 9 directs how the Board of Commissioners shall make contracts.

Section 10 requires an annual statement of the Board of Commissioners to the Board of Supervisors of the County.

Section 11 provides for vacancies in the Board of Commissioners.

Section 12 makes it the duty of the Sheriff or Clerk of the Board of Supervisors, on behalf of the county, to give notice of election in accordance with provisions of section 7, whenever a petition, signed by one hundred freeholders of the county shall be presented to either.

The plaintiff in error is a municipal corporation, recognized by the organic law of the State, (article XII, sections 2 and 12, State Constitution,) and when the bonds and coupons specified in the declaration were made, was exercising the powers of the County of Sheboygan as a body politic and

corporate, under section 7, of chapter 10, of the statutes of the State, as revised in 1849, and section 25, chapter 13, R. S., 1858.

In other words, the plaintiff in error is a corporate body with perpetual succession, and although new persons are elected to compose the Board each year, yet it is the same Board, that continues from year to year.

Perry vs. State, 9 Wis. 22.

The members of this Board of Supervisors are elected under and pursuant to said section 25, which election or appointment is prescribed in and by section 9, article XIII, of the State Constitution:

"All county officers whose election or appointment is not provided for by this constitution, shall be elected by the electors of the respective counties, or appointed by the Boards of Supervisors, or other county authorities, as the Legislature shall direct."

They come from the people, are accountable and responsible to the people for the administration of the affairs of the county.

Sec. 43, C. 10, R. S. 1849.
Sec. 50, C. 13, R. S. 1858.

Towns and Counties, with rights, powers, duties, privileges and immunities usually granted to such corporations, were early incorporated in Wisconsin. Coming as the earlier settlers did from different sections of the Union and from foreign countries, it was natural that these corporations should be dissimilar, that although having one common end, yet they should differ widely as to the means. Some Counties had Commissioners and some Supervisors, and the functions of the corporations clothed with municipal power in different localities, were vested in different boards or officers. As early as 1842, a general system of Town and County Government was adopted by the Territorial Legislature, but having granted without the power of revocation, the law-making power

then could not command, but felt it necessary to commend uniformity throughout the different subdivisions of the Territory. The change was slow, for up to the Constitutional Convention of 1848 such uniformity had not been attained. Hence that convention ordained, (sec. 23, art. IV,) that the Legislature shall establish but one system of town and county government, which shall be as nearly uniform as practicable, and to insure the greatest possible uniformity and certainty, another provision was incorporated (as sec. 22, art. IV,) that "the Legislature may confer upon the Boards of Supervisors of the several counties of the State such powers of a local, legislative, and administrative character, as they shall from time to time prescribe," under which, the first State Legislature, after declaring (Chap. 10, R. S. 1849) that "all the rights, powers, duties, privileges and immunities of the several counties, shall remain as now (then) established, until the same shall be altered by law," not only enacted that

"Each organized county within this State shall be a body politic and corporate, and as such shall be empowered to act for the following purposes, to-wit:

1. To sue and be sued.

2. To purchase and hold real and personal estate for the use of the county, and lands sold for taxes as provided by law.

3. To sell and convey real estate, &c.

4. To make all contracts and to do all other acts in relation to the property and concerns of the county, necessary to the exercise of its corporate or administrative powers.

5. To exercise such further powers as shall be specially conferred by law," but also that

"The powers of a county as a body politic and corporate can only be exercised by the Board of Supervisors thereof, or in pursuance of a resolution by them adopted."

Such enactments have ever since been upon the statute book in full force and virtue.

It is plain, then, from the premises that

I. The Commissioners appointed by the Legislature by the first section, derived no power whatever by such appointment, to bind the county without its consent, if they are not county officers—

NOTE.—Are these Commissioners County Officers?

The views of the Circuit Court upon this point are perhaps fully expressed by MILLER J. in *U. S. ex rel. vs. Hatch, Burnett,* [*Wis.*] 22.

But that case does not apply here, neither does the case 15 *N. Y.* 532. The officers there were not exercising the functions of any governmental department of State in existence at the adoption of the Constitution. Is not the dissenting opinion of BROWN J. exactly in point here. (See Warner vs. The People, 2 Denio, 272.) If so, then the Commissioners were exercising the functions of the Board of Supervisors. They were unconstitutionally appointed not members of the Board of Supervisors, but to an unconstitutional office. All their acts were therefore void.

Are they Agents?

The Circuit Court held that the Commissioners were agents. Who appointed them? Who authorized them to issue bonds? The bonds and coupons are here, the act is before the Court, the questions then arise:

Where and how did they get the power? No vote appears. If it did, would that give the authority? No action on the part of the County is shown at all, except evidence tending to show a ratification by the Board of Supervisors. If a vote of the people was the act which authorized the issuing of the bonds, can any other power than the sovereign people ratify them? In short, the County, as such, could not act, unless specially empowered by the Legislature. Commissioners are appointed and empowered; the people are authorized to adopt their acts; can the people be charged until they do adopt them? If the board of Supervisors had been empowered, then perhaps that Board might ratify,

because the Legislature cannot appoint county officers. (Sec. 9, Art. XIII, State Constitution.)

People vs. Draper, 15 N. Y., 532.

If they are county officers, then their appointment is unconstitutional, and all their acts are void.

They are a corporation created for the purpose of aiding in the construction of a railroad. Then it must certainly be admittted that, by the principles of every free government, and of our own constitution in particular, it is not in the power of the Legislature to authorize one corporation to create a debt for another without the consent, express or implied, of the party to be charged.

City of St. Louis vs. Russell, 9 Mo., 503.
Hampshire vs. Franklin, 16 Mass., 76.
Town of Milwaukee vs. City of Milwaukee, 12 Wis., 93.
Hasbrouck vs. City of Mil., 13 Wis., 37.
Jackson Co. vs. La Crosse Co., 13 Wis., 490.
Atkins vs. Randolph, 30 Vt., 227.
State vs. Kennan, 7 Ohio, (N. S.) 546.

The Bonds in question were issued by the Board of Commissioners without the consent of the defendant.

No power is conferred upon the County of Sheboygan to issue the bonds. No authority is specifically conferred upon the County of Sheboygan to aid in the construction of a railroad.

Hasbrouck vs. Milwaukee, 13 Wis., 3

But the power is given to another corporation, or five men, contrary to sec. 22 of art. IV, of the State Constitution.

"The Legislature may confer upon the Boards of Supervisors of the several counties of the State such powers of a local, legislative and administrative character, as they shall from time to time prescribe."

In this section does not the word *may* mean *must*? Is it not necessary, to give full force and effect to the provision, that it be inhibitive instead of permissive?

Turnpike Co. vs. Miller, 5 Johns., Ch. 10.
Darby vs. Condit, 1 Duer, 590.

Again, if no authority has been given to the county as a body politic and corporate to make the bonds, could the county ratify or consent to their being issued for the county by some indifferent person or corporation?

Clark vs. The City of Janesville, 13 Wis., 417.
Town of Rochester vs. Alfred Bank, Id., 432.

Can a county exercise its corporate powers in any other way than through its constitutional functions? Can the

Legislature confer such powers upon five men? If so, they can be conferred upon one man or upon the whole people.

Reduced to its elements, the act in question authorizes A. to issue the bonds of B. to C. without B.'s consent.

C. sues B. on the bonds and coupons. Are they the bonds and coupons of A. or B.? If the bonds and coupons of B., then the Legislature has the power of making contracts for B. without the consent of B., either express or implied.

The Board of Commissioners had not the temerity to pretend to bind the County by its action, but the coupons here proffered are mere requests, unaccepted drafts, from the Board to the County Treasurer to pay. It does not appear that the county ever made a subscription or loaned its credit or promised to pay. The County never issued any bonds or coupons, nor had one dollar of the money borrowed by this Board. It holds no security for the loan.

Is the county liable for the undertakings of outsiders? Does the request of an unauthorized agent bind the principal or the agent?

Much stress will undoubtedly be placed upon the vote of a majority of the legal voters of the County, provided for in section 7. But there was no proof of that vote. The bonds do not recite even the act. An unauthorized certificate is appended to each bond. Is that certificate of value as evidence? In the Cin., Wilmington & Z. Railroad vs. The Commissioners of Clinton County, 21 Ohio, 77, it was decided that such a provision in such laws "is of the same character as the law for instance which leaves to the citizens of every township to decide upon the erection of a town house, and that where a law is perfect, final and decisive, in all its parts, and a discretion given which related only to its execution, there is no delegation of legislative power," but our constitution prescribes that such discretion shall be reposed upon the Board of Supervisors of the several counties, not upon a majority of the legal voters of the county.

The act of saying whether the bonds shall issue, is administrative in its character. Hence we insist that the power of

making and issuing county bonds for any purpose cannot be delegated by the Legislature to any other person or corporation or persons than the Boards of Supervisors of the several counties.

The vote of the people, if a vote was ever had, gave no additional force or validity to the bonds. If they were void in their inception, nothing could give them life.

Unless the legal voters or a majority of the county can bind the county by a contract for and on behalf of the county, they cannot ratify or consent to the issuing of bonds for any purpose.

The whole act seems to have been formed so as to prevent the county as a body politic and corporate from having any voice in the matter. The language of Cole, Judge, in Foster vs. Kenosha, 12 Wis., 622, seems to the point:

"Nor do we consider it a sufficient answer to this objection to say that the Legislature properly restricted the power of the corporation to levy taxes and contract debts, when they provided that no tax should be levied or money borrowed under section 8, unless a majority of the voters should be in favor of levying the tax or making the loan. For in the latter case, the restriction would be one imposed rather by the people than by the legislature. Besides, if a majority of the qualified electors were in favor of the tax, then the Common Council would have the power to impose it without limit. Thus the minority would be oppressed, and at the mercy of a base majority of the electors. And one of the great advantages and blessings of a written constitution, above all others, is that the minority can invoke its protection against the demands and oppression of a violent majority. It may be said that, according to the structure of our society and government, the people are regarded as the safest depositary of political power, and that to make the authority of levying taxes and running in debt, depend upon the votes of a majority of the qualified electors of the corporation, would be the very best check which the Legislature could devise to prevent abuses in the exercise of this power. But such is not the theory of the constitution. The powers of our gov-

ernment are divided into three departments, and agents are chosen by the people, to exercise and put in action these several powers of the government. The law-making power is vested in the Legislature. That is the department of the government to organize cities and incorporate villages. The constitution gives the Legislature that power and does not leave it with the people. And it contemplates, when the Legislature does organize a city and confer upon the local authorities powers of taxation and of raising money, that it should do so with proper restrictions and limitations, so as to prevent abuse, and protect the minority of the electors from the oppression and tyranny of the majority. The Legislature cannot divest itself of this duty and transfer it to the people."

We therefore insist that, if it be competent for the Legislature to empower counties to aid in the construction of railroads, the Legislature cannot transfer such power to an irresponsible Board of Commissioners or to the people, but under the Constitution of the State, all the power of a county as a body politic and corporate can only be exercised by the Board of Supervisors, or under their direction.

II.

If the Commissioners are agents of the county, their power and authority should be shown—

It must appear that the bonds and coupons were issued pursuant to all the provisions of the act in question. That is to say, before the bonds and coupons can be introduced in evidence, the plaintiff must prove, *aliunde:*

1. The making and presentation of the petition prescribed by section 12.

2. The publication of the notice and the law pursuant to section 7, and the returns of the election giving a majority as specified in said section.

3. The acts and doings of the Board of Commissioners pursuant to section 3. These must appear from the records of the Commissioners. Sec. 2.

4. The order of a majority of the Board for the issue of the bonds, at a meeting of the Board.

This order must appear from the record of the proceedings. (Sec. 8.)

5. The consent and approval of the Board of Supervisors of County of Sheboygan, to the acts of the Board of Commissioners, and to the issuing of the bonds and coupons in the manner and form in which they appear.

This consent and approval must appear from the records of the proceedings of the Board of Supervisors and in the form of a resolution. (Sec. 7, C. 10, R. S., 1849; Sec. 7, C. 13, R. S., 1858.)

6. A direction for the County Treasurer, to pay each and every of the bonds and coupons, from the Board of Supervisors. This direction must appear from the records of the proceedings of the Boards of Supervisors, and must be in the form of an order of the Board of Supervisors, signed by their clerk, and countersigned by their Chairman.

C. 10, Sec. R. S. 1849; Sec. 127, C. 13, R. S.; 1858.
Sec. 8, Ch. 129, Session Laws 186, p. 14.
Gould vs. Town of Sterling.
Decided in N. Y. Court of Appeals and reported.
1st Am. Law Register, (N. S.) 290.

Inasmuch as none of these facts appear, the defendant in error failed to prove any authority in the Commissioners, or indebtedness against the plaintiff in error.

Tolman vs. Emerson, 4 Pick., 130.
3 Kern, 599.
3 Hill, 262.

We are unable to find any power or authority for the County Treasurer to pay money out on the order of any other person, corporation or board than the Board of Super-

visors of the County. The coupons here proffered are not such orders, they are not the assumpsits of the county, and are entirely incompetent, immaterial and irrelevant. Hence they should have been excluded, or disregarded.

The admission of the act, bonds and coupons was therefore error, and the motion for a new trial was improperly overruled. The judgment should be reversed and a *venire de novo* awarded.

All which is respectfully submitted.

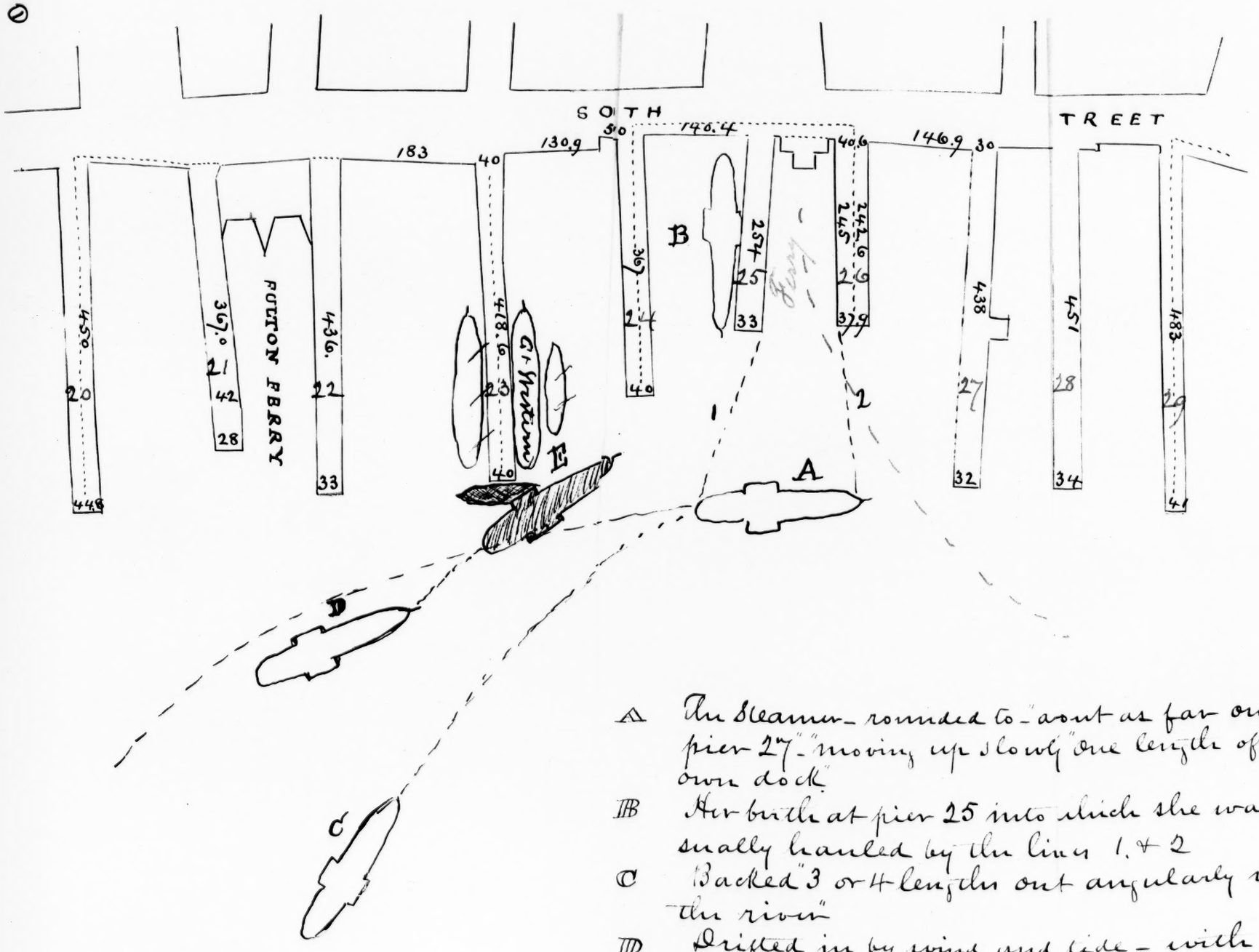
BUTTRICK & HILL,

Attorneys for Plaintiff in error.

Milwaukee, Wisconsin.

Milwaukee, Nov. 1863.

James S. Brown
of Counsel



A The Steamer- rounded to- "about as far out as pier 27"- "moving up slowly" one length off her own dock"

B Her berth at pier 25 into which she was usually hauled by the lines 1. & 2

C "Backed" 3 or 4 lengths out angularly into the river"

D Drifted in by wind and tide- with her helm hard a port- "Broadside on"- "Stern most out" "Stem pointing towards her berth"

E The Collision- Steamer having come "a head with full force" "helm hard a starboard"

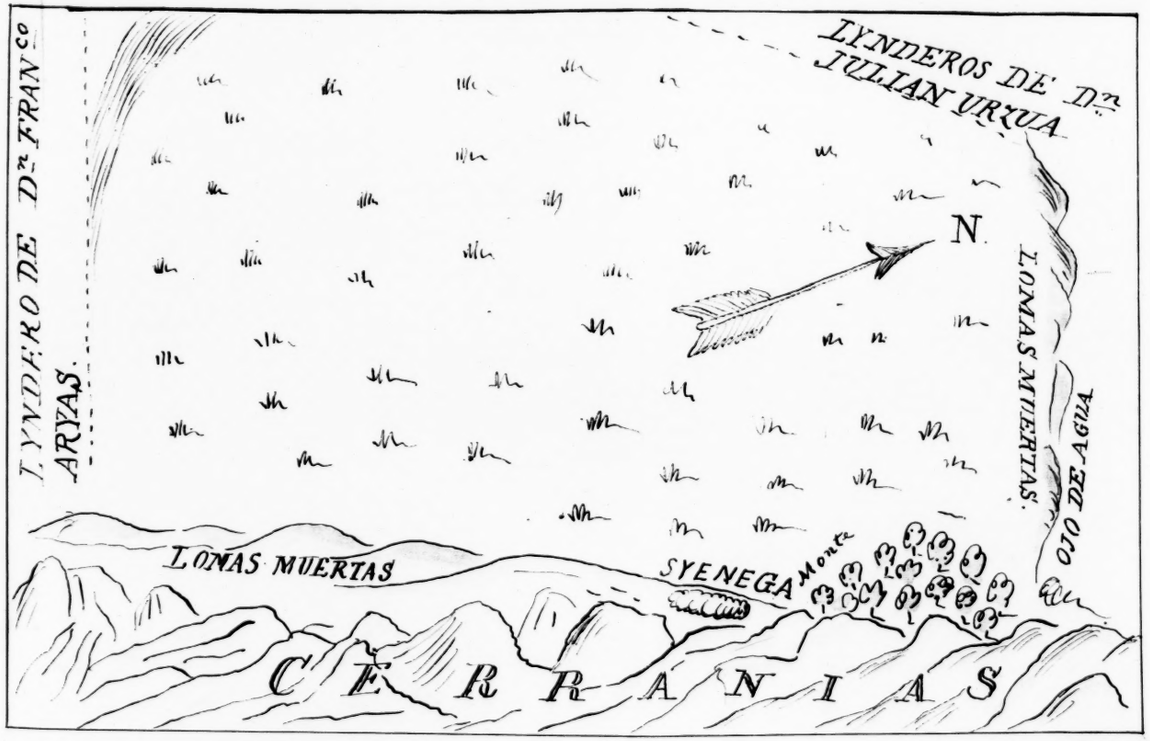
N° 365. U. States vs. Gomez
p-16.

N° 569 A

Panoche grande
Vicente Gomez.

Filed in Office Feby 9th
1853—
Geo. Fisher
Dep Clk

Exhibit No 1. to the deposition of
Juan Castro taken in No 569
before Com'r U.S.D.J.
Thornton Feby 24th 1852
Geo: Fisher
Dep Clk



Escala de 500 Vs.

1 2 3

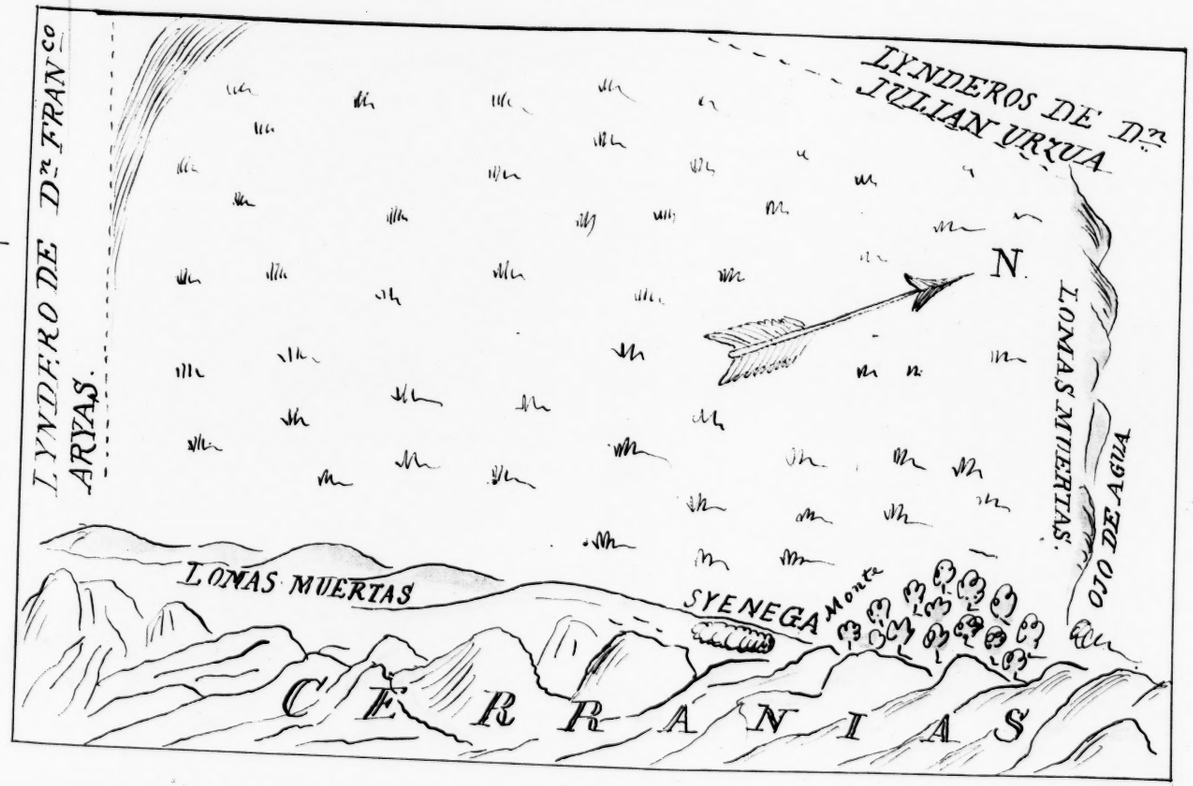
N° 365. U. States vs. Gomez
P-16.

N° 569 A

Panoche grande
Vicente Gomez.

Filed in Office Feby 9th
1853—
Geo. Fisher
Dep Clk

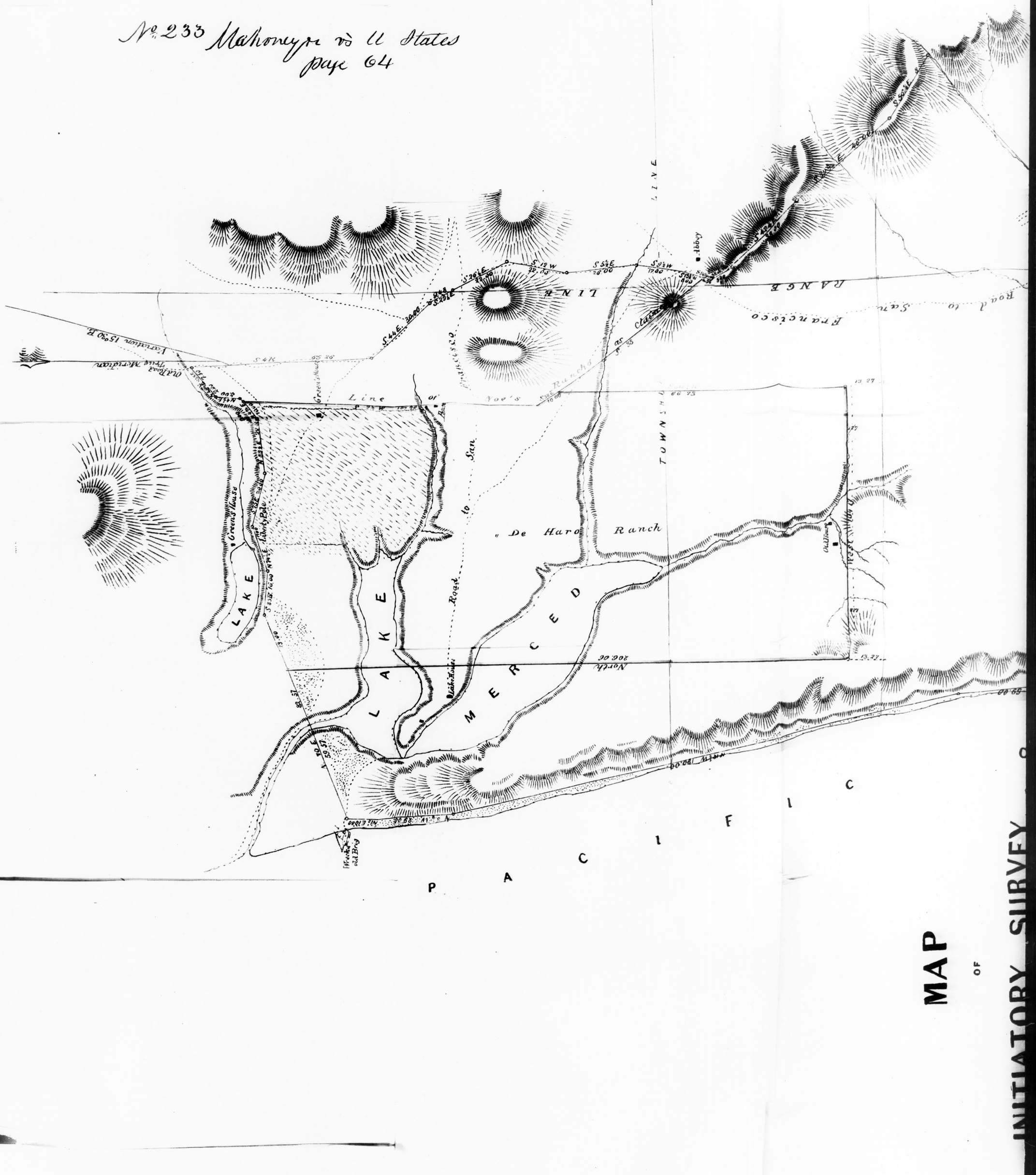
Exhibit no 1. to the deposition of
Juan Castro taken in no 569
before Comr Harry S.
Thornton Feby 24th 1852
Geo: Fisher
Dep Clk



Escala de 500 Vs

1 2 3

No. 233 Mahoney vs U States
page 64



MAP

OF

INITIATORY SURVEY

OF THE LANDS CLAIMED BY THE HEIRS OF

FRANCISCO DE HARO.

Containing Half a Square League

SURVEYED BY LEANDER RANSOM U.S DEPTY SURYR.

SCALE of 20 Chains to 1 Inch.

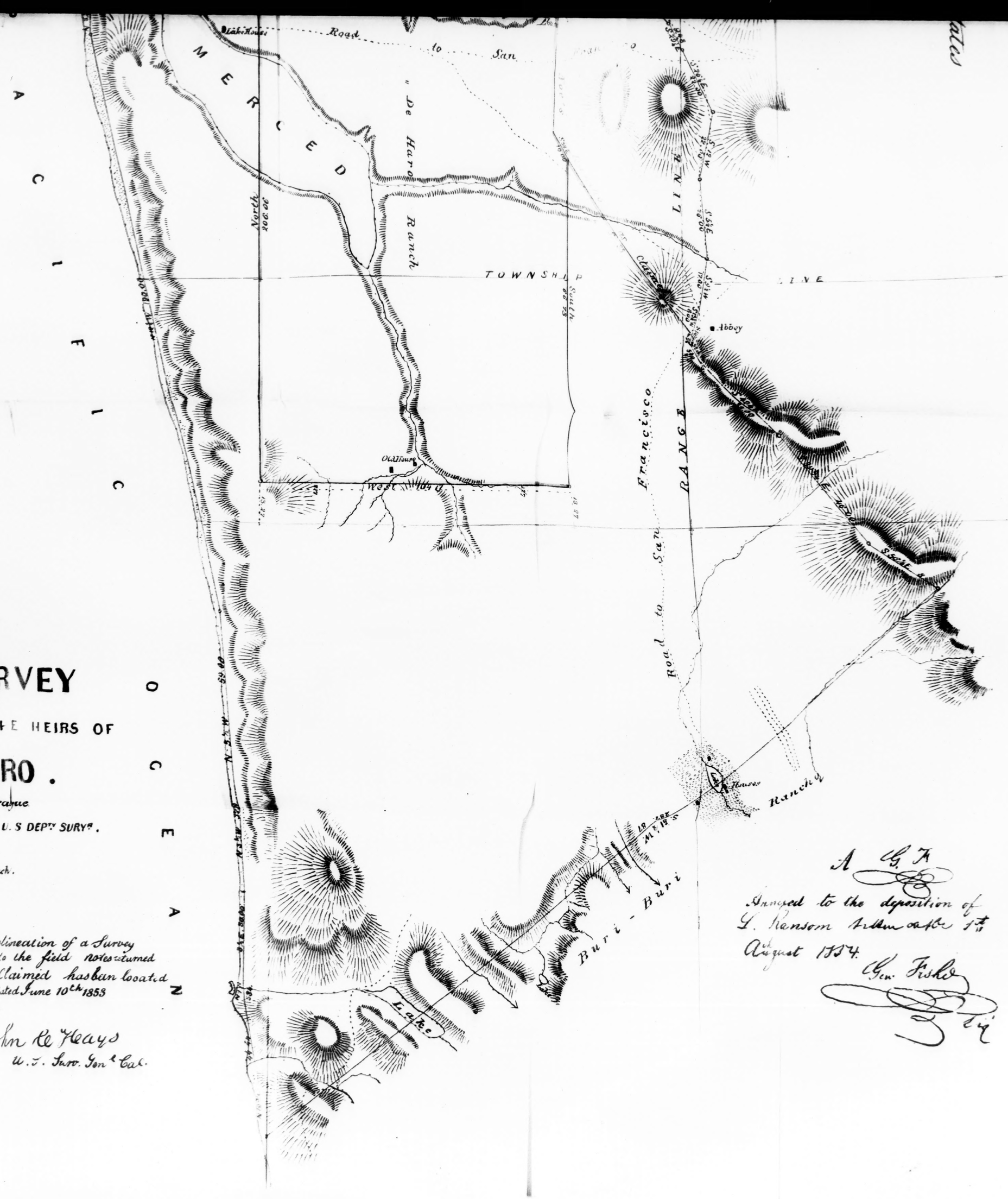
I certify that this Map is a correct delineation of a Survey executed by Leander Ransom Esqr. agreeably to the field notes returned and that the quantity of One half League Claimed has been located in conformity to the instructions of this Office dated June 10th 1853

U. S Surveyor Generals Office
San Francisco California September 22nd 1853

John C Hays
U.S. Surv. Gen'l Cal.

Annexed to the deposition of
L. Ransom taken before me
August 1854.

Gen. Fisher



(L)

Nº 233 Mahoney & vs W Stan
Page 64

No. 102
Josefa de Haro et al
Laguna de la Merced
Field in Office July 12. 1854
Geo Fisher
Asst

MAP

OF

PRELIMINARY SURVEY

Lake
Hills
San
Wreck of old Brig
LAKE
MERCED
PACIFIC
OCEAN
Green's House
Liberty Pole
Field
Green's House
Noe's Ranch
House
Lake House
Road to San Francisco
True Meridian
Variation 15°30' E.
Old Road
De Haro Ranch ~ Township
House
Lake
Abby
San Francisco
Range

No. 102
Josefa de Haro et al
Laguna de la Merced
Field in office July 12. 1854
Geo Fisher
Asst

MAP

OF

INITIATORY SURVEY

OF THE LANDS CLAIMED BY THE HEIRS OF

FRANCISCO DE HARO.

Surveyed by Leander Ransom U. S Dept Surv'r

Scale 20 chains to the Inch

I certify that this Map is a correct delineation of a Survey executed by Leander Ransom Esq'r agreeably to the Field Notes returned and that the quantity of one half league claimed has been located in conformity to the instructions of this office dated June 10th 1853

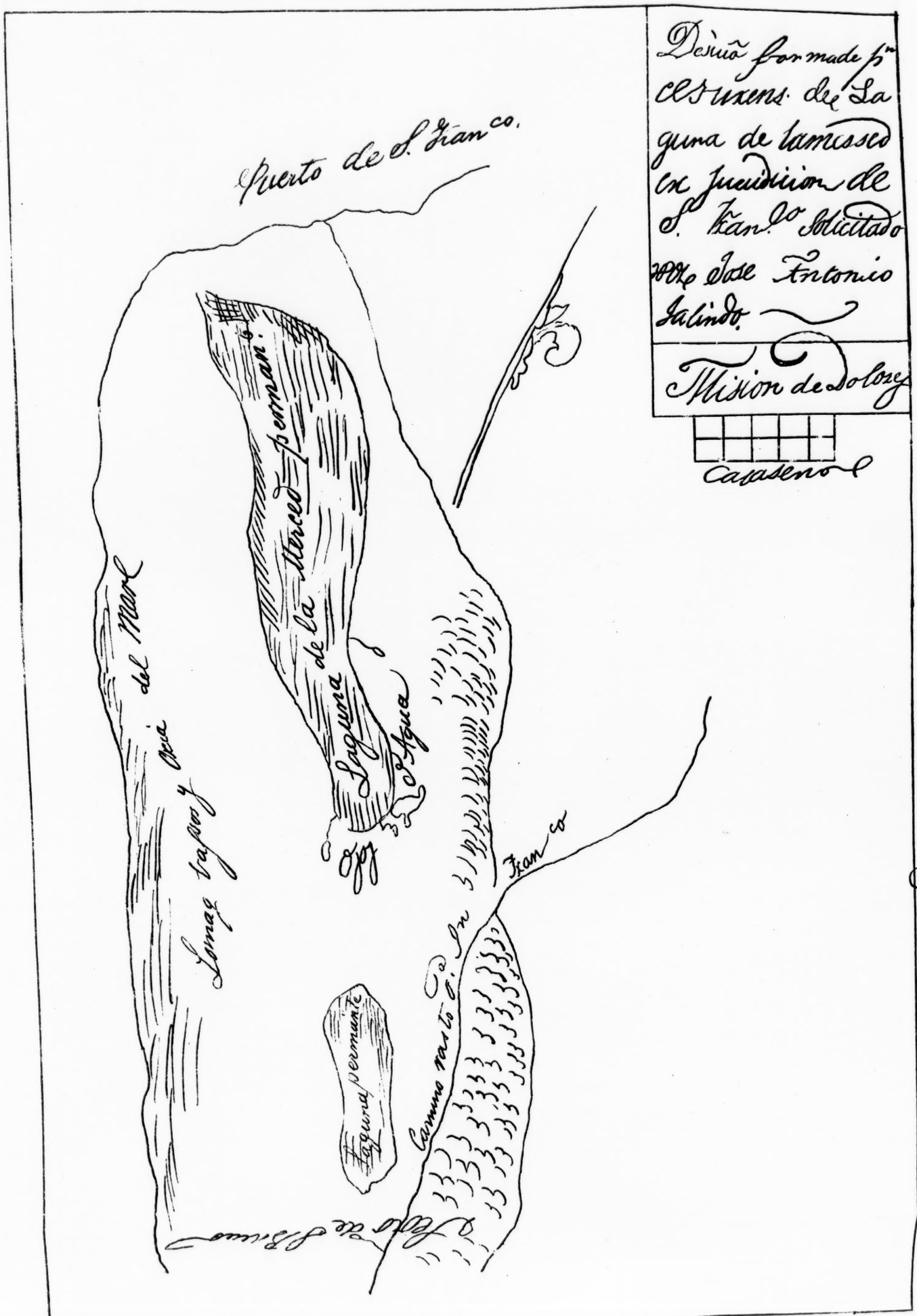
U. S Surveyor Genes al's Office
San Francisco September 22nd 1853)

John C. Hays
U S. Surv. Gen'l Cal.

I certify this to be a true copy of the original now on file in this office
Sur Genl office
San Francisco Cal
July 10. 1854

John C Hays
U S Sur Genl Cal.

de la Alta Califor[nia] ase[a] manuel 4 · 1 DK



Diseño formado p.r los Ynteresados de la Laguna de Tamisco en Jurisdiccion de S. Fran.co Solicitado por Jose Antonio Galindo.

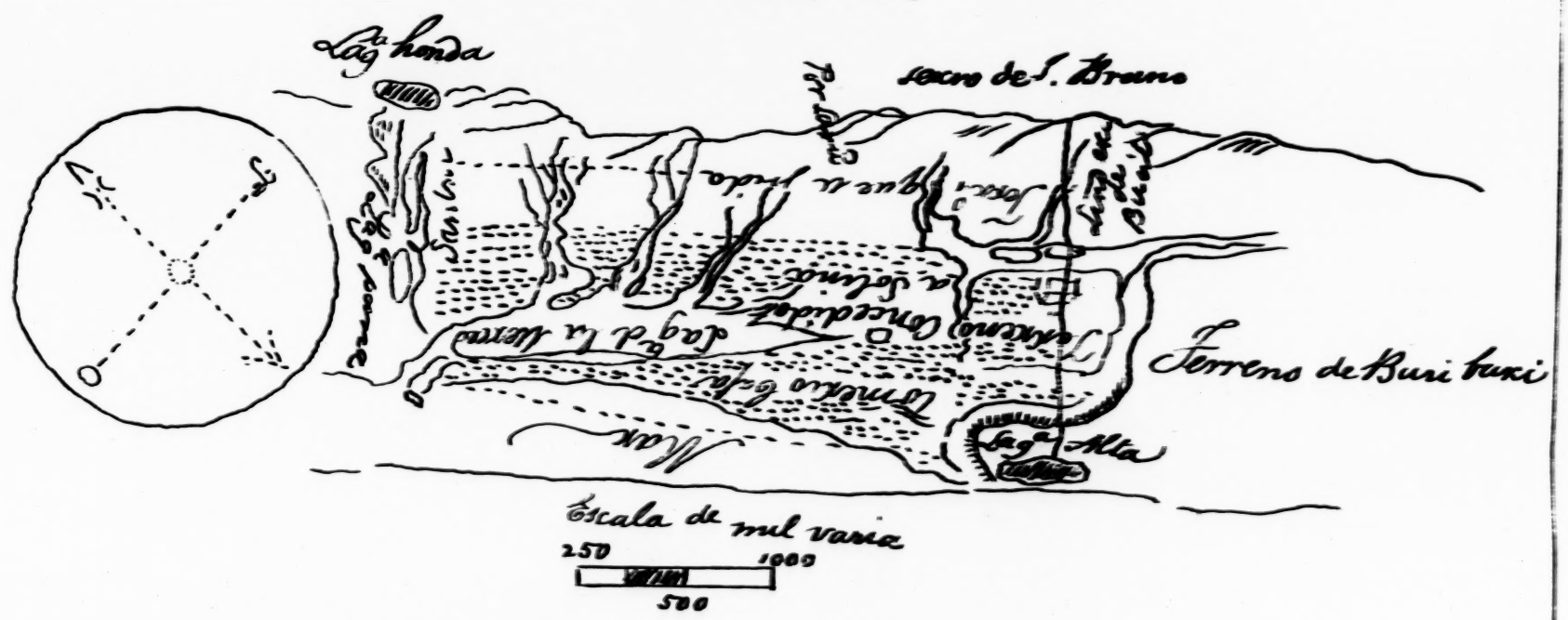
Mision de Dolores

No. 233. - Mahoney vs U. States, - page 66.

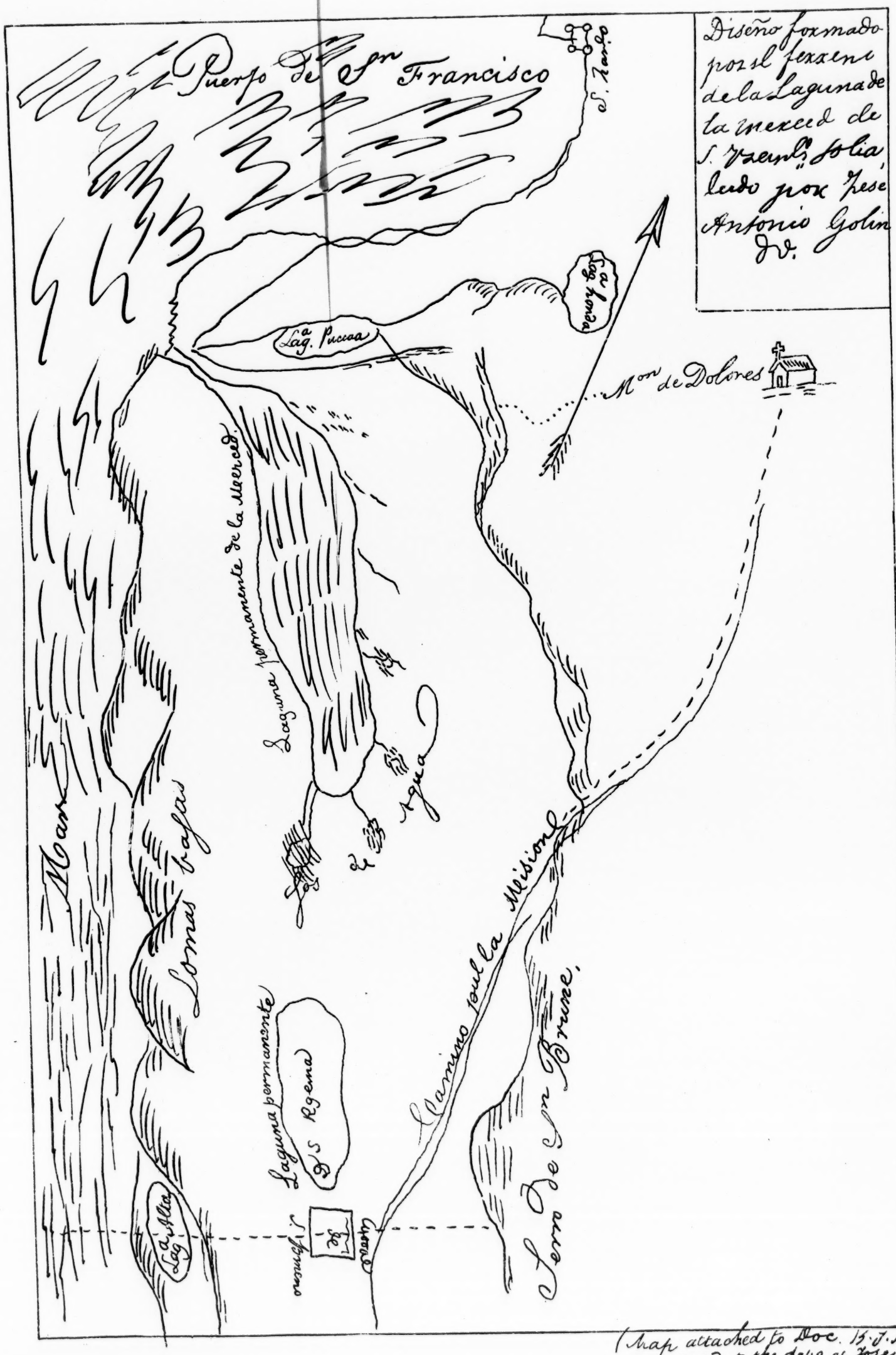
Map on page 4 of Expediente

No. 233 - Mahoney vs. U. States - p. 93.

Diseño del terreno que nombran de la Laguna de la Merced y parte del que de pide. O L suf Cerro d S. Bruno —



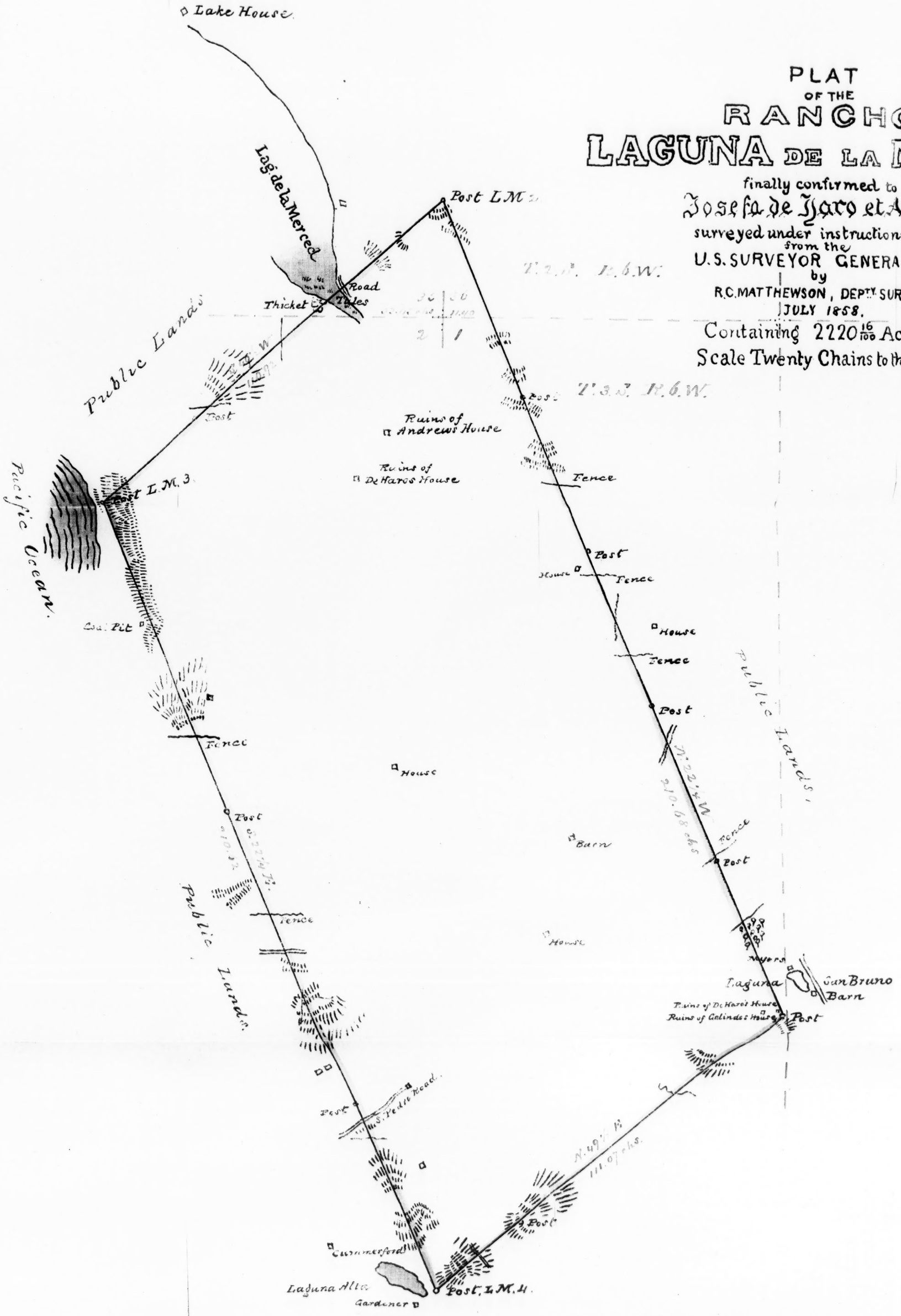
Map on page 8 explaining remainder the appendix of 11 Plans



(Map attached to Doc. 15 J.T. no. 1, and to the depo of Jose Castro taken at our Consul K.J. Thornton.)

No. 233. Mahoney vs. U. States,
page 140.

PLAT
OF THE
RANCHO
LAGUNA DE LA MERCED
finally confirmed to
Josefa de Haro et Al.
surveyed under instructions
from the
U.S. SURVEYOR GENERAL,
by
R.C. MATTHEWSON, DEPTY SURVR
JULY 1858.
Containing 2220 16/100 Acres.
Scale Twenty Chains to the Inch.



BURI BURI RANCHO

I certify this to be a full true and correct Copy of the Original Plat on file in this Office. In witness whereof I hereunto have signed my name, and caused the Seal of this Office to be affixed, this the 8th day of November 1859.
U.S. Surveyor Generals Office

T. 2 S. R. 6 W.

U.S. SURVEYOR GENERAL,
by
R.C. MATTHEWSON, DEPTY SURVR
JULY 1858.

Containing 2220 16/100 Acres.

Scale Twenty Chains to the Inch.

T. 3 S. R. 6 W.

Public Lands

Road to Tules

Thicket

Post

Ruins of Andrews House

Ruins of De Haros House

Fence

Post L.M.3

Pacific Ocean.

Post

House

Fence

House

Fence

Post

N. 22¼ W. 210.68 chs.

Fence

Post

Public Lands.

Coa. Pit

Post

Fence

Fence

House

Barn

House

Rancho

Ruins of De Haros House

Ruins of Galindo's House

Post

Laguna

San Bruno Barn

Post

S. Pedro Road

Post

N. 49½ W. 111.07 chs.

Cussumeford

Post

Laguna Alta

Gardener

Post L.M.4.

I certify this to be a full true and correct Copy of the Original Plat on file in this Office. In witness whereof I hereunto have signed my name, and caused the Seal of this Office to be affixed, this the 8th day of November 1859.

U.S. Surveyor Generals Office
San Francisco, California,
November 8th 1859.

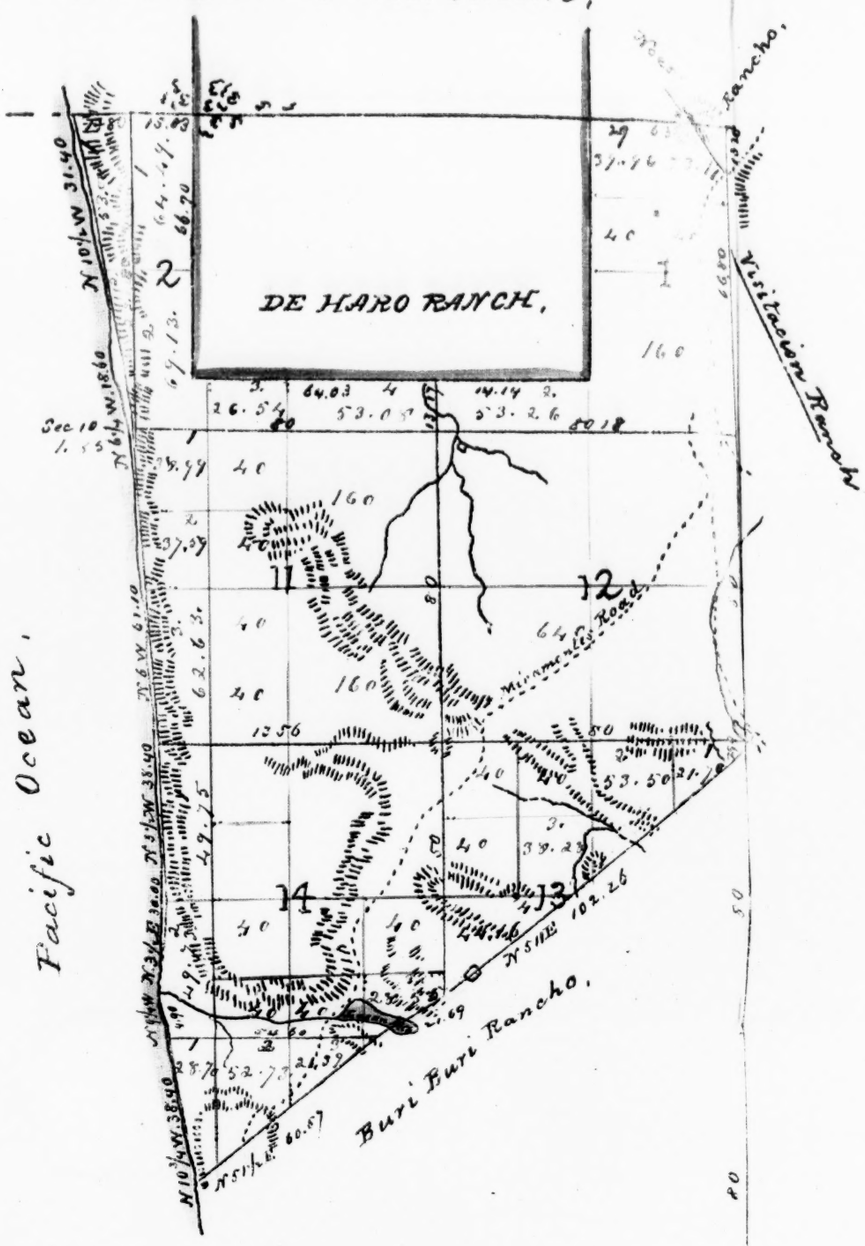
J.W. Mandeville
U.S. Surv. Genl Cal.a

BURI BURI RANCHO

Bowen & Co. Lith. Phila.a. 1864.

No. 233. - Mahoney vs. U. States - page 244.

Fractional Township No. 3 South, Range No. 6 West, of Mount Diablo Meridian,



U. S. Surveyor Generals Office
San Francisco, California,

I hereby certify this to be a full true and correct copy of the original Plat on file in this office, of the Official Survey of the Sub-divisions of Township No 3 South, Range No 6, West of Mount Diablo Meridian.

In witness whereof I have hereunto signed my name and caused the Seal of this Office to be affixed this 11th day of April 1861.

L. S.

J. W. Mandeville
U. S. Surv. Gen. Cala.

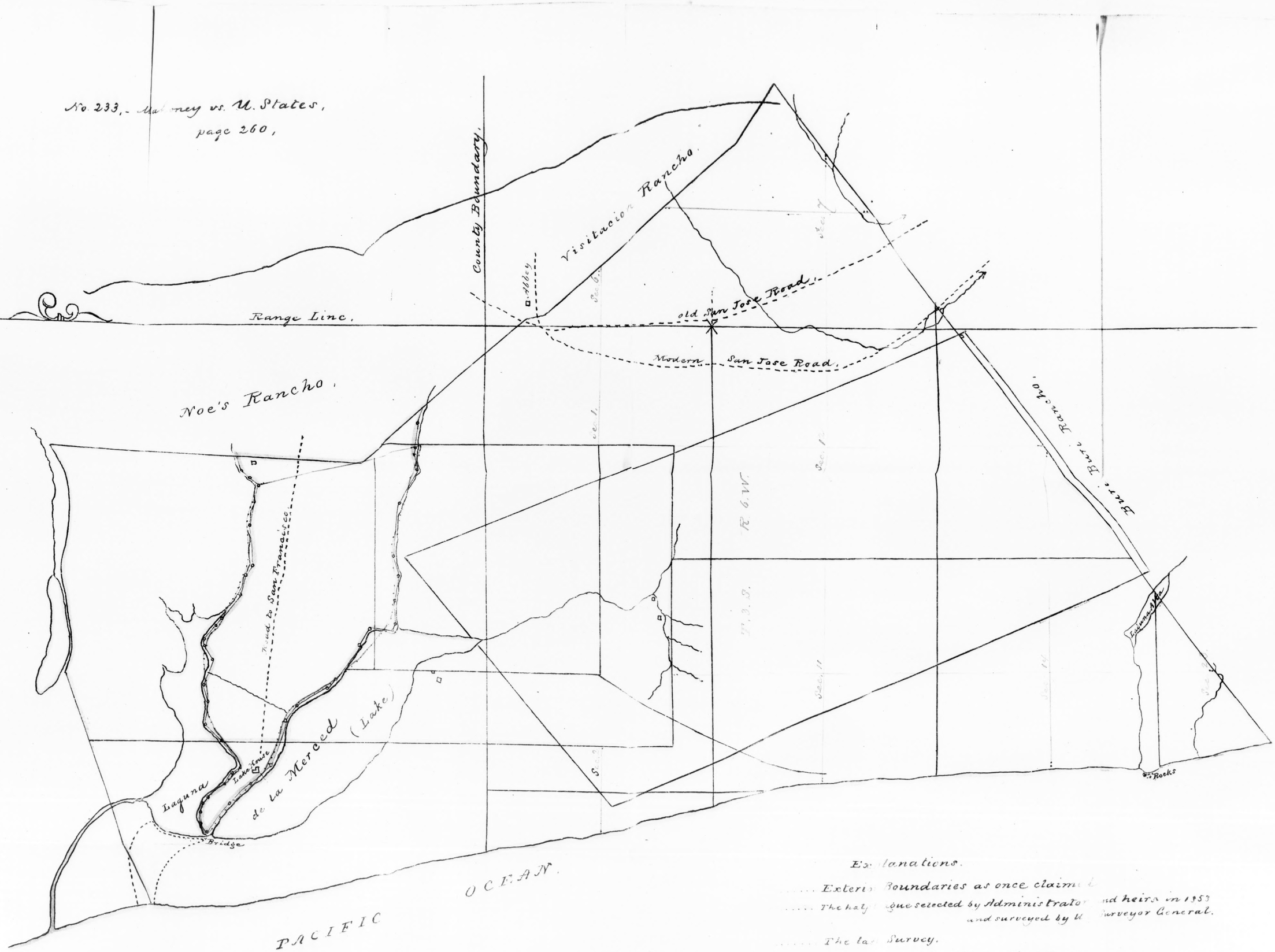
Var. 15½° E.

The above Plat of fractional Township No 3, South, Range No 6, West, (of Mount Diablo Base, Meridian lines) was made out from and in conformity to the field notes of the undermentioned Surveys thereof, returned to this office, which have been filed, examined and approved.

Under	Contract		Distance			Cost		Payment charged in account of the Surveyor Genl. for the
dated	with	Work executed and exhibited	Miles	chs	Links	Dolls.	cts.	
Sept. 29th 1852	Chas. C. Tracy	North Boundary Township	2	1	00	30	97	4th Quarter 1852
" " "	" " "	South " "	1	7	91	27	45	" " "
" " "	" " "	East " "	6	00	00	84	00	" " "
June 10th 1854	Robt B. Hays	Section Lines	7	66	61	94	29	
" " "	" " "	Meanders	3	31	80	52	46	

Surveyor Generals Office
San Francisco, California,
June 29th 1854
(Signed) John C. Hays
Surv. Gen. Cala.

No. 233, - Mahoney vs. U. States,
page 260,



Scale 20 chains to the inch.

Explanations.

..... Exterior Boundaries as once claimed

..... The half league selected by Administrator and heirs in 1853 and surveyed by U.S. Surveyor General.

..... The last Survey.

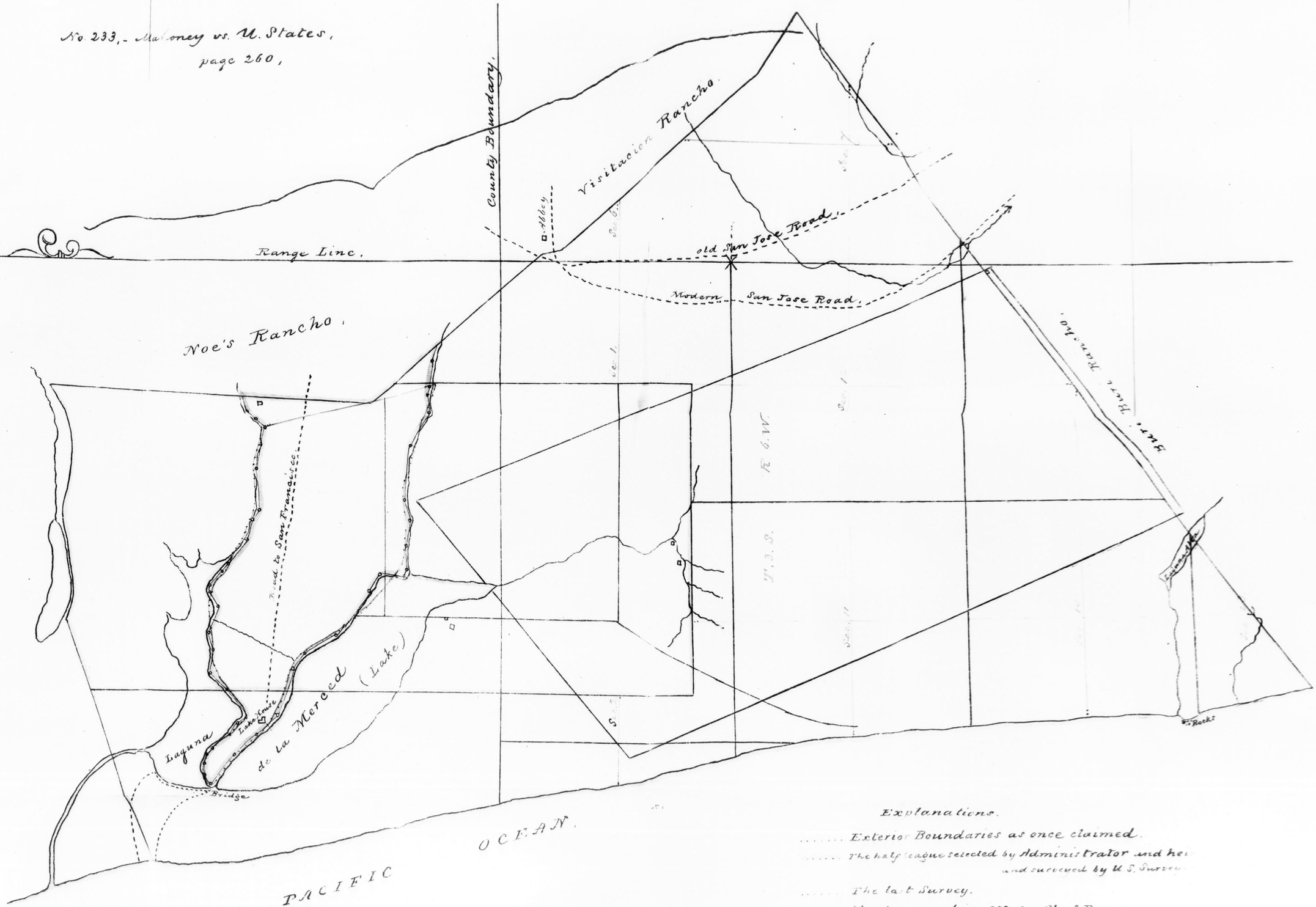
..... Tract surveyed in 1853, for Chas Brown

..... Tract [illegible] donized and returned to U.S. Register as public lands in 1854, and surveyed by U.S. Surv. Genl.

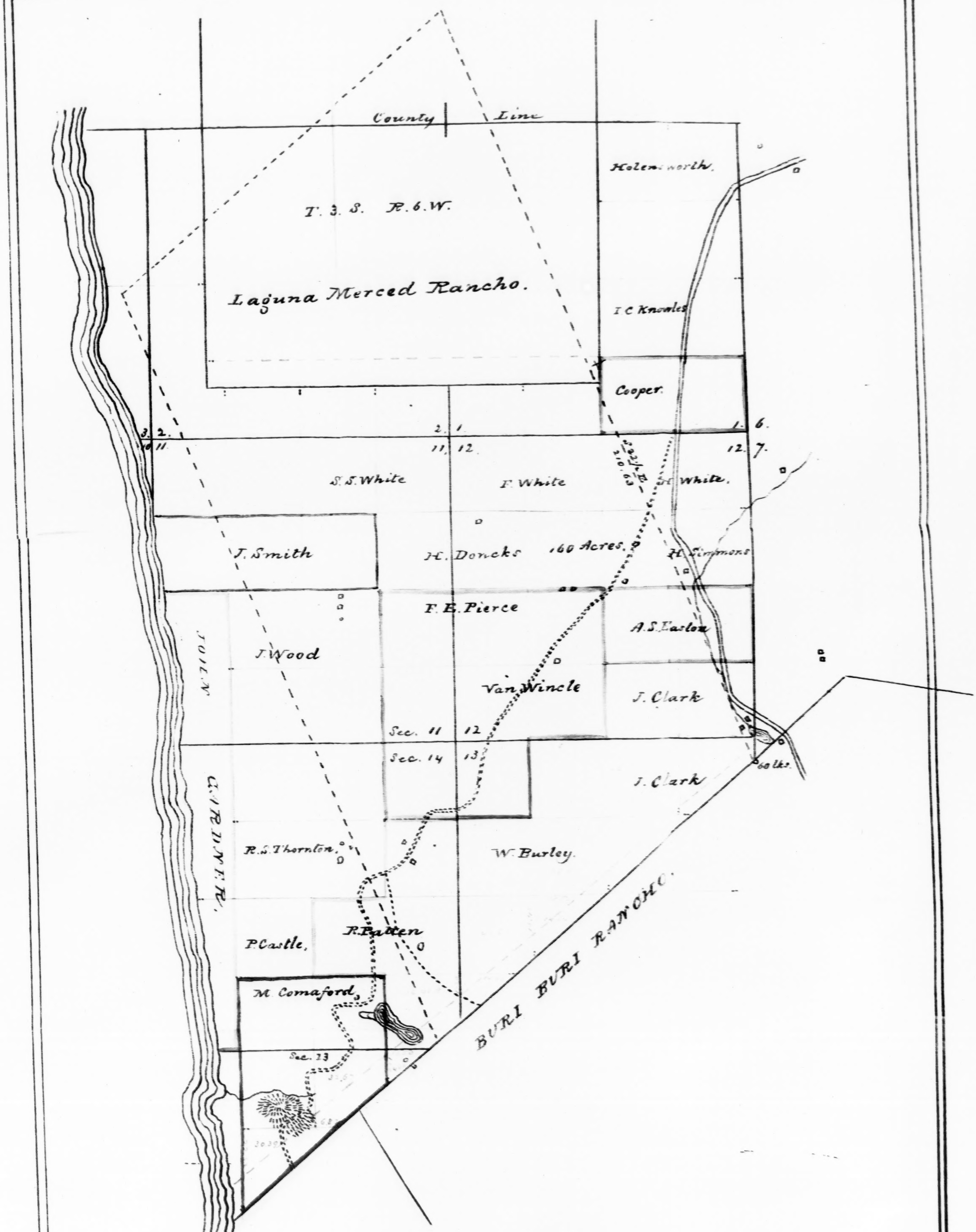
——— Approximate position of the tract included in the Deeds of Brown and Denison.

D

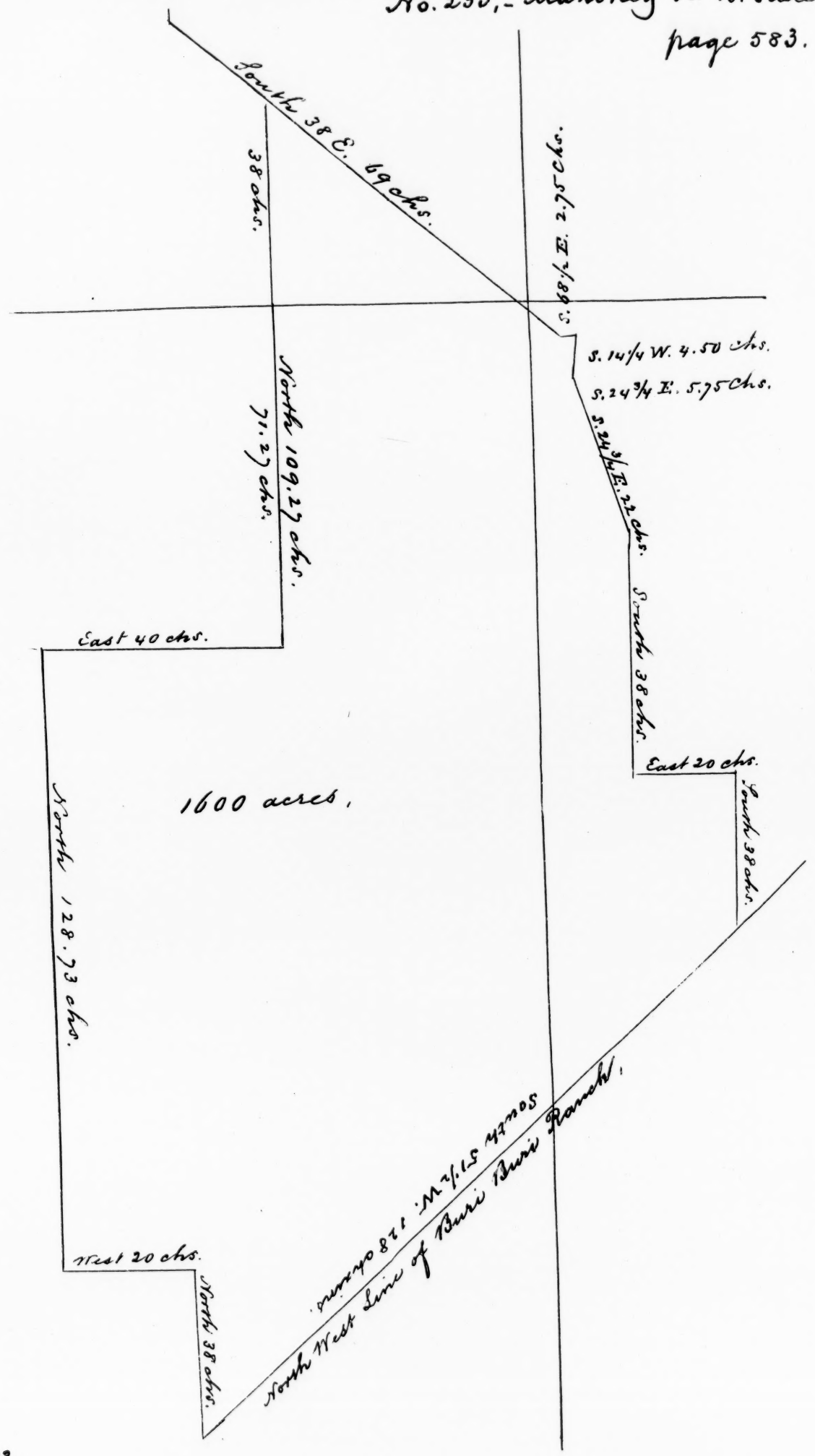
No. 233, - Maloney vs. U. States,
page 260,



Scale 20 chains to the inch.


County Line
T. 3. S. R. 6. W.
Laguna Merced Rancho.
Holen's north.
I C Knowles
Cooper.
6.
1.
2.
3.
10
11.
12.
7.
S. S. White
F. White
S. White.
J. Smith
H. Doncks
160 Acres.
H. Simmons
F. B. Pierce
A. S. Easton
J. Wood
Van Wincle
J. Clark
Sec. 11
12
Sec. 14
13
60 lks.
J. Clark
R. S. Thornton.
W. Burley.
R. Patten
P. Castle,
M. Comaford,
Sec. 23
SAN MATEO
BURI BURI RANCHO

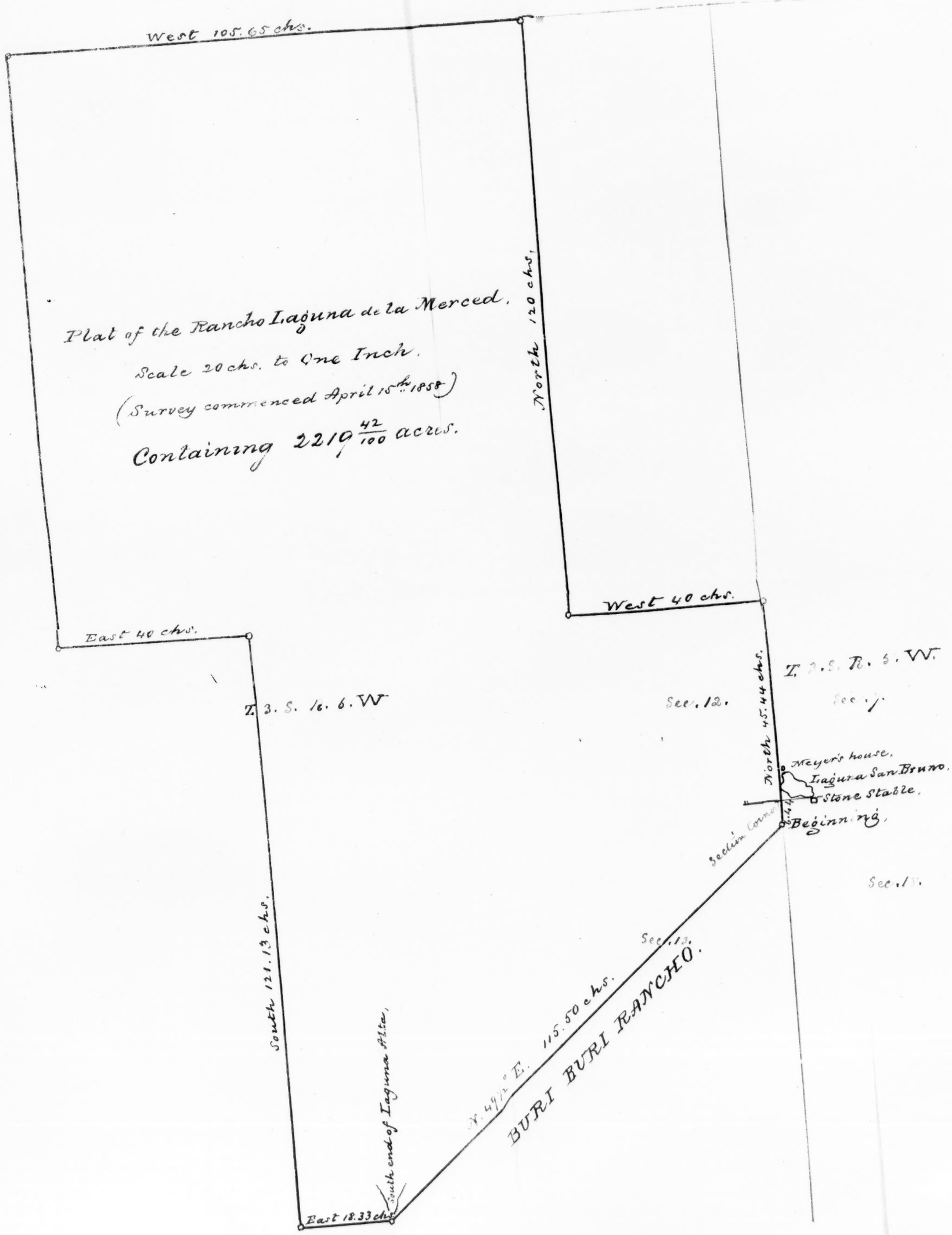
No. 233, - Mahoney vs. U. States,
page 583.



583,

13

No. 233, - Mahoney vs. U. States,
page 658



No 233 Mahoney &c vs. State
Page 728

Survey No 1960

I surveyed for John Middleton the following described tract of land Commencing at the Bridge N.W. from the "Lake House" in the County of San Francisco (1) thence S. 66½° E 376 chs. (2) thence S. 56¾° E. 7.53 chs (3) thence S. 45° E. 4.74 chs. (4) thence S. 34° 40' E. 3.54 chs (5) thence S. 41½° E. 8.26 chs. (6) thence S. 39½° E. 5.43 chs. (7) thence S. 68½° E. 8.68 chs (8) thence S. 85° E. 7 chs (9) thence S. 49° 20 E 5.67 chs. (10) thence S. 32¼° E. 7.80 chs (11) thence S. 28½° E. 10.50 chs. (12) thence 41½° E. 14 chs. (13) thence S. 56° 20' E. 7.09 chs. (14) thence S. 12° W. 11.41 chs. (15) thence N. 57½° E. 6.28 chs. (16) thence S. 88½° E. 15.75 chs. (17) thence N. 70¾ E. 8.74 chs (18) thence S. 79° E. 23.94 chs. (19) thence S. 36½° E. 4.18 chs (20) thence S. 70° 20 E. 13.88 chs. (21) thence N. 16½° W. 6.33 chs (22) thence N. 41¾° W 50 lks (23) thence N. 88° 25 W. 2.78 chs (24) thence N. 69° W. 7.28 chs (25) thence N. 63¼° W. 2.18 chs (26) thence N. 83° W. 1.68 chs (27) thence S. 73¾° W 3.95 chs (28) thence S. 82¼° W. 9. chs. (29) thence N. 70¼° W. 4.21 chs (30) thence N. 69° W. 8.65 chs (31) thence N 26° W 14.78 chs (32) thence N. 5¼° W. 3.88 chs. (33) thence S. 65° W. 7.20 chs (34) thence N. 63¾ W. 7.92 chs (35) thence S. 73½° W 3.49 chs. (36) thence S. 85° 35 W. 9.54 chs (37) thence S. 44½° W. 4 chs (38) thence S. 55° W. 8.75 chs. (39) thence S. 68¾° W. 3.19 chs (40) thence S 74° W 2.96 chs. (41) thence N. 29½° W. 4.07 chs. (42) thence N. 53¾ W. 6.12 chs (43) thence N. 14½° W. 2.55 chs (44) thence N. 41¾° W. 4.68 chs (45) thence N. 75½° W. 3.64 chs. (46) thence S. 75¾° W. 5.55 chs (47) thence S. 63° W. 3.93 chs. to place of Commencing) Containing 495 a. 3 R. 33 P

City & County of San Francisco Oct 26th 1853.
Jas. J. Gardiner
County Surveyor

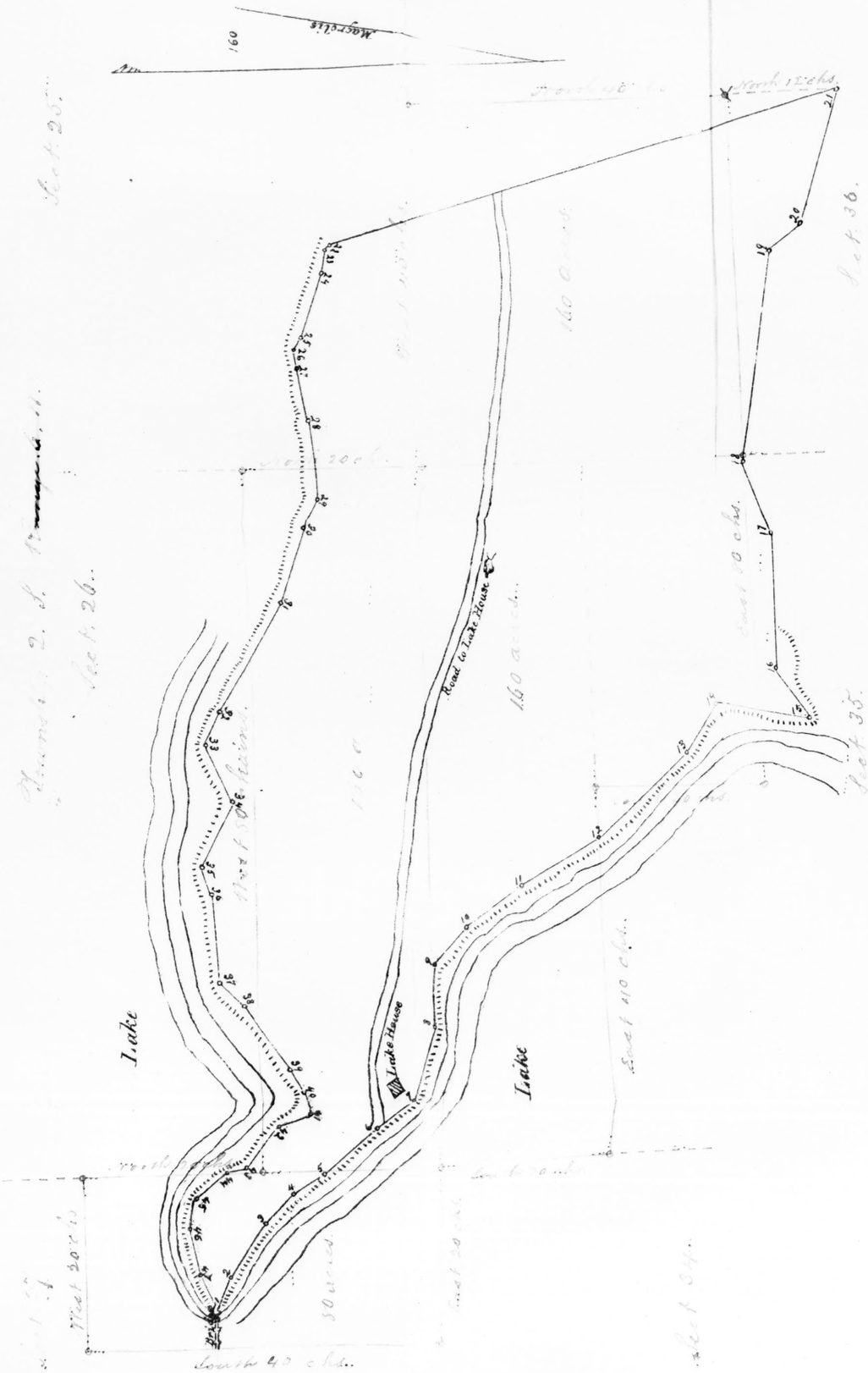
(For Plot of Survey see opposite Page)

City & County of San Francisco December 17th 1853 This day Located the following school Land Warrants on the above described tract of land for John Middleton nos 803. 804 805 806 each for 160 acres of Land issued 13th day of December 1853 to John Middleton and by him located on above described tract of land said location being described as follows; Commencing 12 chains due north from the S. E. Corner of above described tract thence due north 40 chaines. thence due West 40 chs thence due North 20 chs. thence due West 80 chs thence due North 20 chs. thence due west 20 chs. thence due South 40 chaines. thence due East 20 chs. thence due South 20 chs. thence due East. 20 chs. thence due South 20 chs. thence due East 40 chs. thence due South 20 chs. thence due East. 80 chs. to place of Commencing.) as per red lines on Diagram on opposite page / Commencing 640 acres

Signed.
Jas. J. Gardner
County Surveyor

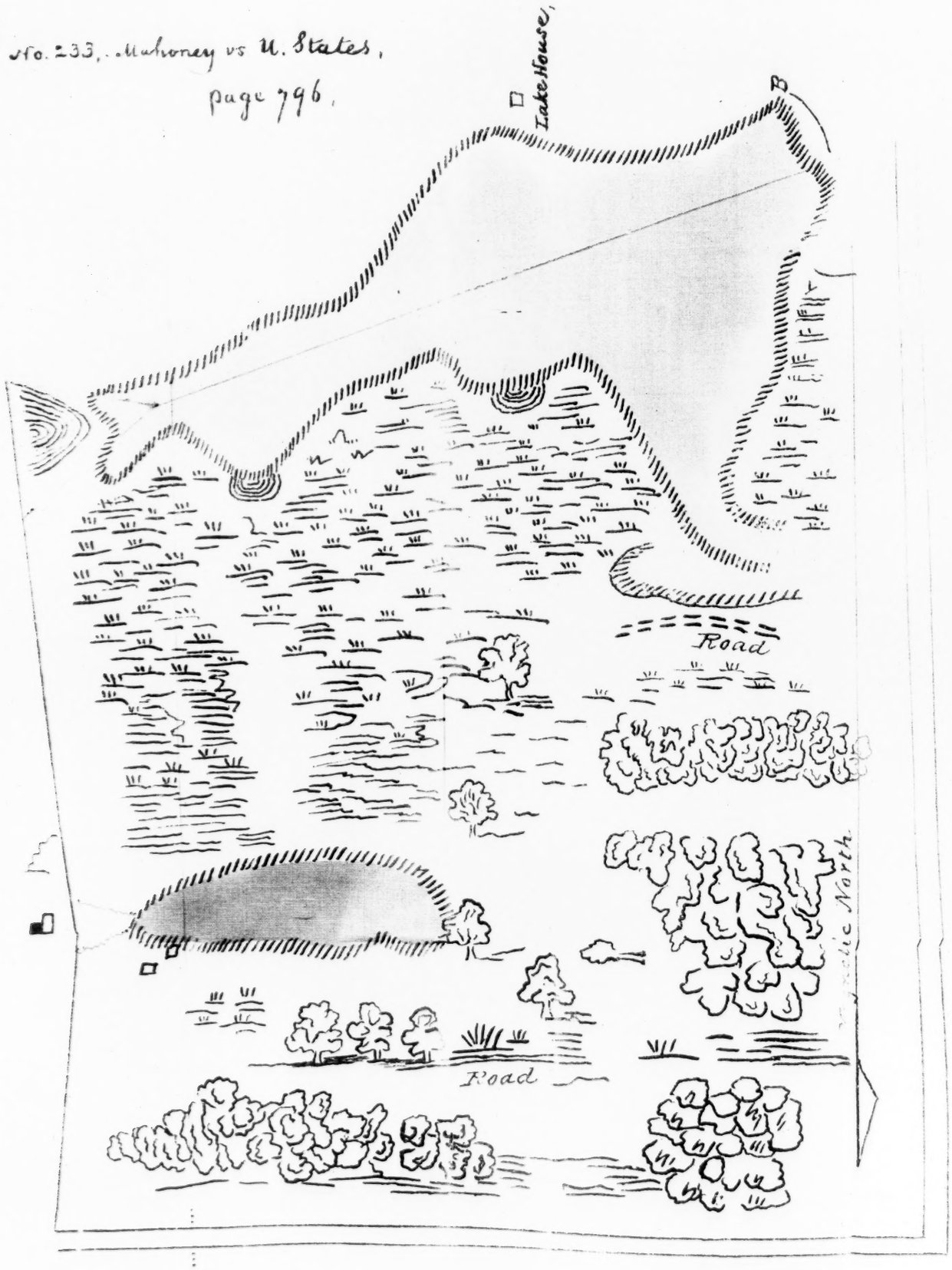
December 17th 1853.

Plot of Survey No 1960 (see opposite page)
Exhibit Gardiner, No 1.



No. 233, Mahoney vs U. States,

page 796.



No 233 Mahoney & al. vs. U. States
page 831

San Miguel Rancho

T. 2. S. R. 6. W.

Public Land

T. 2. S. R. 5. W.

Rancho Rincon de Salinas y Protero Viejo

Witness Post 30 Links West

Ranch

Newfield

Portezuelo

Ruins of Andrews House

Ruins of De Haro's House

Rancho Cañada de Guadalupe la Visitacion y Rodeo Viejo

Public Land

T. 3. S. R. 6. W.

T. 3. S. R. 5. W.

Pacific Ocean

Laguna Seca

Ruins of Ranch House

Sec. 12.

Sec. 7.

Sec. 13.

Sec. 18.

Ruins of Old Corral

Tank

Spring

Buri Buri

Laguna atten

Ranch

Road

Rancho San Pedro

Witness Post 30 Links West

Post

PLAT

of the

RANCHO LAGUNA de la MERCED

finally confirmed to

Joseta de Haro et al

Survey adopted by the

U. S. SURVEYOR GENERAL

from former Surveys and other data on file in this Office

Containing 2223 100 Acres

Scale 20 Chs to 1 inch

Var. 15° 30' E.

Boundaries

No	Course	Dist
1	West	108.13
2	South	257.64
3	N. 49½ E	147.14
4	North	68.33
5	N. 7¼ W	18.51
6	N. 1¾ W	46.69
7	N. 9¾ E	7.89
8	N. 21 E	5.79
9	N. 35 E	2.86
10	N. 23½ E	2.05
11	N. 38 W	0.65

669.66 - 8 miles 29 Chs 66 Lks

The field notes of the Rancho Laguna de la Merced and from which this Plat has been made, have been examined and approved and are on file in this Office

U. S. Surveyor General's Office
San Francisco Cal'a
June 15th 1863

E. H. Beale,
U. S. Surv. Gen'l Cal.

U. S. Surveyor General's Office
San Francisco Cal'fornia,

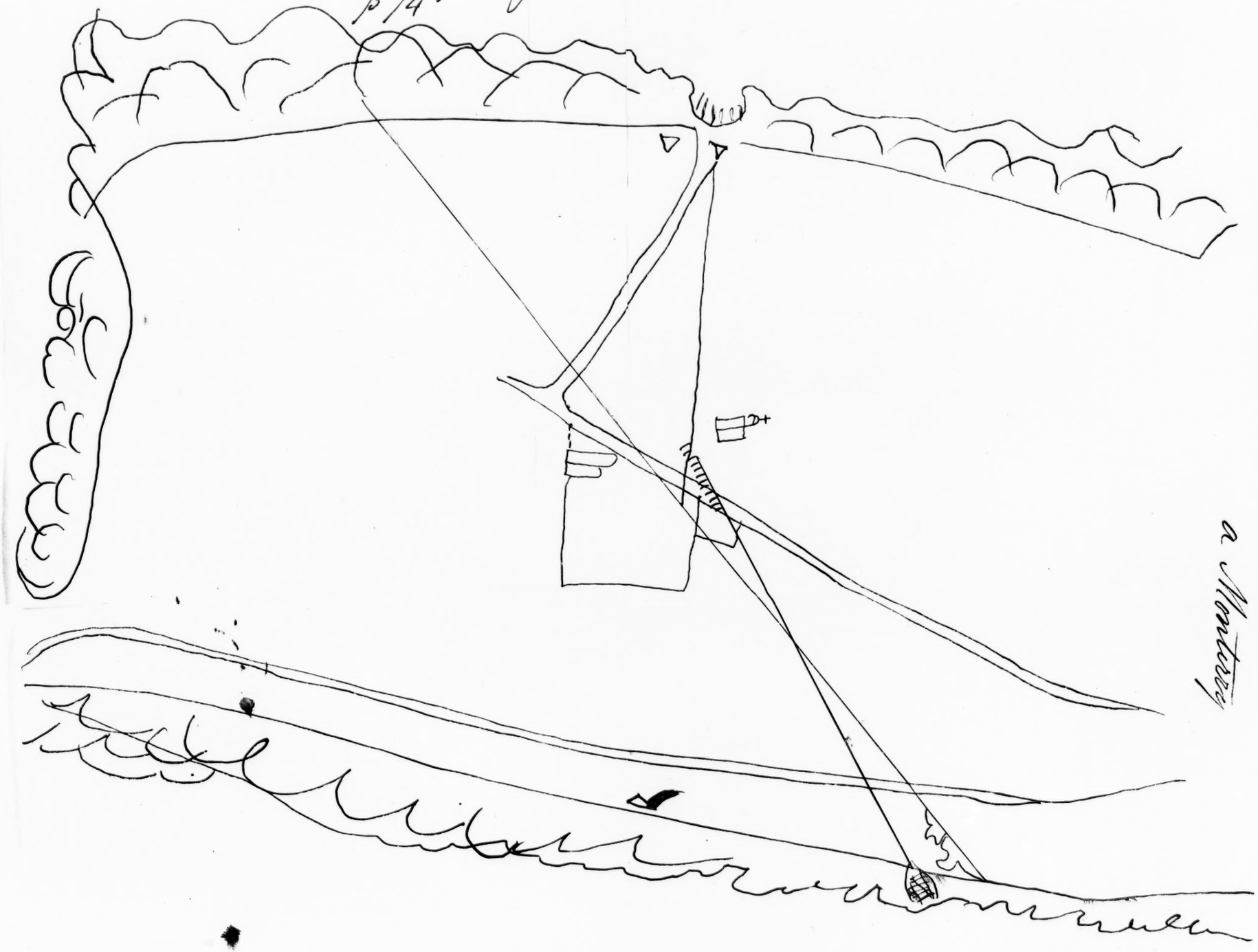
I hereby certify this to be a full true and correct copy of the original Plat on file in this Office, of the Official Survey of the Rancho Laguna de la Merced, finally confirmed to Joseta de Haro et al.

In witness whereof I have hereunto signed my name and caused the Seal of this Office to be affixed, this 18th day of June 1863

Approved July 27th 1863
Ogden Hoffman
Dist. Judge

E. H. Beale,
U. S. Surv. Gen'l Cal.

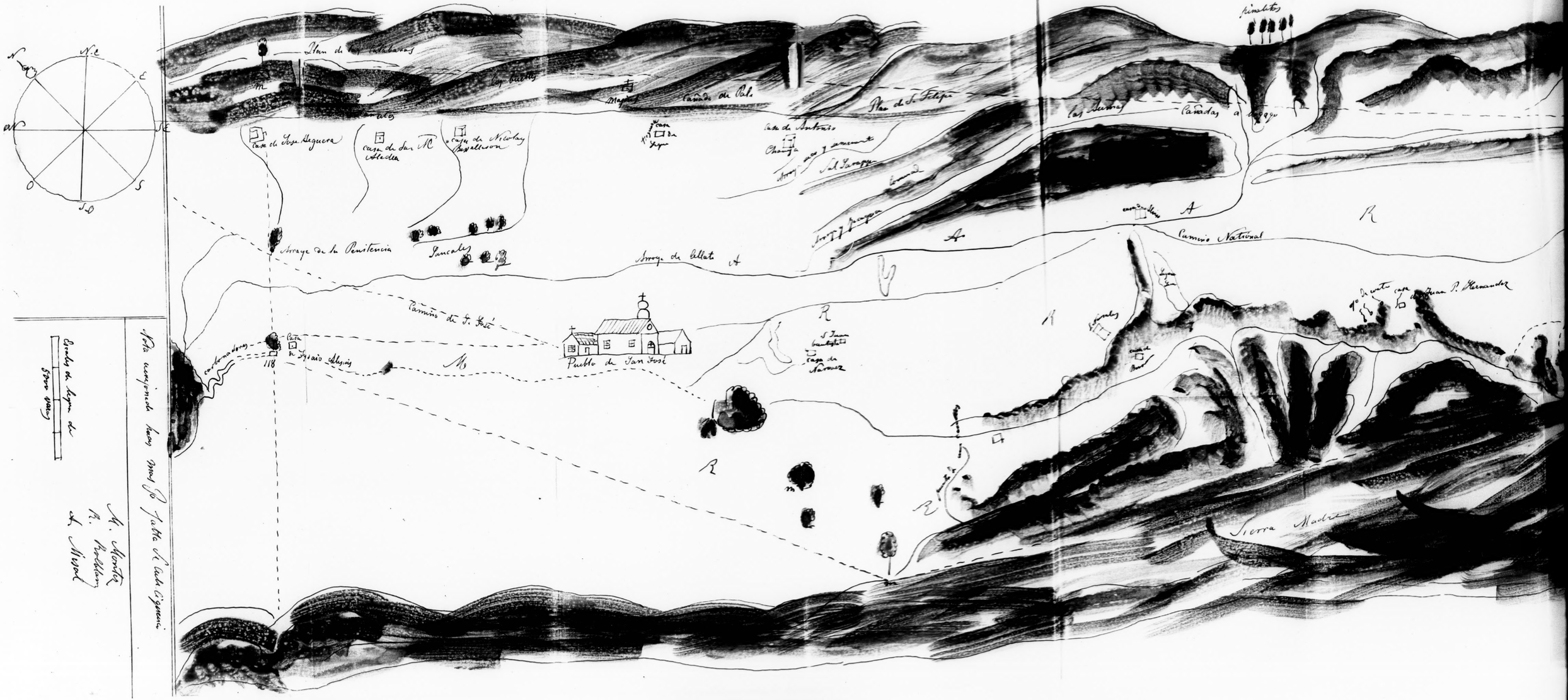
No 295 U States vs Mayor &c of San Jose
p 74



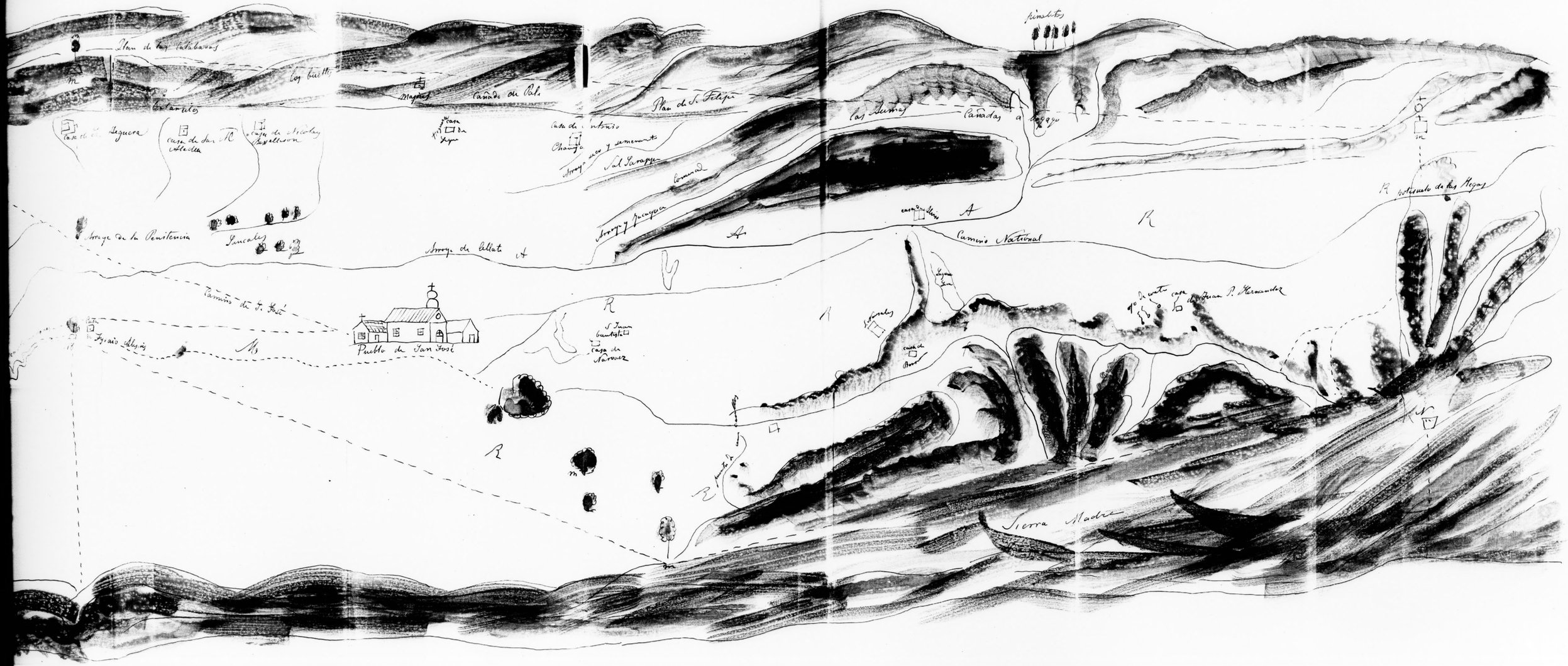
2

No. 295. U. States vs Mayor et al. del de San José

pag. 148.



Hacienda Mayor et al. de San José
1748.



No 295 United States vs Mayor &c of San José. p. 362

10

Pueblo de S. José

Arroyo del Coyote

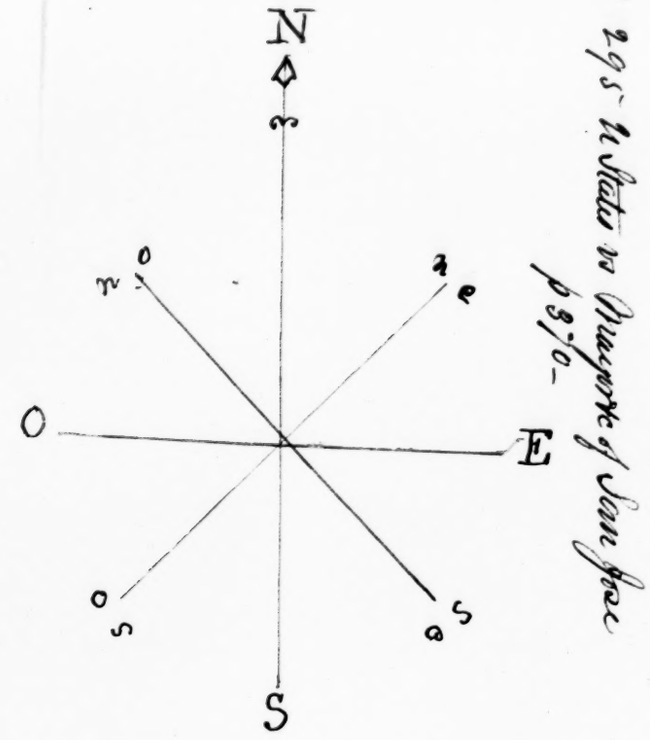
Paraje del Coyote

Paper Seal

Lomería

Escala de dos leguas or 5000 vs castellanas

Nº 295 Un Plano de Diseño de Tierras
p 8 $ 0 -



Casa #

ojo de agua

ojo de agua

Arroyo

Camino real

Laguna

Sierras

ojo de agua

ojo de agua

ojo de agua

ojo de agua

Linia del Rancho del Sñr Dn Carlos Castro

500 1 2 3 4 5000

Escala de cinco mil varras

Diseño de Tierras Solicitadas por Juan Alvires

Nota

En las tierras representados en este diseño hai varios lomerias, Poblares, y Encinos Las lumas no son medidas ni las limitas puestas con exactitud

No 295 El Status es Magnetico de San Jose
page 415

Robles

Robles

Robles

Nº 295 U. States vs Mayor of San José
p 393

La Cordillera

Agua y S

Arroyo del Coyote que se seca anualmente

Loma de las Lagunas

Rancho de la Laguna

Agua y

Portezuela de la Laguna

Camino Real del Pueblo de S. José para Monterey

Loma de S. Juan

N

VAR. 12° E.

Robles

Desague de la Laguna

Laguna

Siembras

Huerta

viña

Agua y

Tular g.s de seca

Parte del Rancho del Andr.
Agustin Narbaez

Escala de Media Legua

Diseño del sitio de Sta Teresa de la Jurisdiccion del Pueblo de San Jose Guadalupe ocupado po el Andr. Juaquin Bernal quien pide su legitima concesion Mayo 19 de 1834.